STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

- -

The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,

Plaintiffs,

vs. File No. C1-94-8565

Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown &
Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,

Defendants.

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DEPOSITION OF VICTOR D. LINDSLEY III

Volume I, Pages 1 - 143

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(The following is the deposition of VICTOR D. LINDSLEY III, taken pursuant to Notice of Taking Deposition, pursuant to Rule 30.02(f), at the offices of Womble, Carlyle, Sandridge & Rice, Attorneys at Law, 3300 One First Union Center, 301 South College Street, Charlotte, North Carolina, on September 26, 1997, commencing at approximately 10:18 o'clock a.m.)

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P R O C E E D I N G S

(Witness sworn.)

VICTOR D. LINDSLEY III

called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMATION

BY MR. FINZEN:

Q. Would you state your full name and address for the record, please.

A. My full name is Victor David Lindsley III, my address is [DELETED]

Q. Mr. Lindsley, my name is Bruce Finzen. I'm one of the attorneys for the State of Minnesota and Blue Cross and Blue Shield in a lawsuit that has been filed by the State of Minnesota and Blue Cross and Blue Shield against Lorillard and other tobacco manufacturers in Ramsey County District Court in the State of Minnesota. And you are here this morning as a representative of Lorillard for purposes of giving testimony concerning information known by and available to Lorillard with regard to advertising and -- and youth. Do you understand that to be the reason that you're here?

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A. Yes, sir.
Q. And do you possess information, either on -- of your own or that you have acquired, that -- that is known by and available to Lorillard on those topics?
A. Yes, I do.
Q. Okay. Would you please tell me what your current position is with the company.
A. My current position is group brand director.
Q. How long have you been in that position?
A. For a period of approximately six years.
Q. And with regard to the information concerning advertising and -- and youth, what -- is there anything particular about the group brand position that you're in that -- that makes you the person qualified from the company to speak about those topics?
A. I believe, yes, and that is that I've spent a large portion of my 16 years at Lorillard working on the Newport brand.
Q. How long in terms of the 16 years did you spend working on Newport?
A. I would say approximately 12 of those years.
Q. Okay. Anything else by way of your either current position or prior positions with the company that makes you a qualified person to testify on those

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issues?
A. No, sir.
Q. Now before your current position of group brand director, what --
Before I ask you that, what is -- what exactly are the duties of a group brand director?
A. In this case, the group brand director's responsibilities are to coordinate different groups that manage a variety of different brands.
Q. Which brands do you coordinate efforts for?
A. Currently for Newport, Kent and True.
Q. Have there been others, other mix of those while you were group brand director?
A. Yes. I think my first year, as I recall, as group brand director, I was responsible for Kent, True and a brand called Harley-Davidson and a brand called Style.
Q. And then at -- at some point Harley-Davidson and Style were replaced or dropped, and Newport was added to your responsibility?
A. Yes, sir.
Q. Do you know when -- when that occurred approximately?
A. About a year after I was group brand director. The year I don't recall exactly.

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Q. All right. And what --

If you would describe a little bit what your job duties are as group brand director.

A. Okay. As I mentioned, I have two groups, one that manages Newport day-to-day business, one group that manages Kent and True and manages the day-to-day business there. I, with them, coordinate those day-to-day activities, but beyond that, look at developing long-term brand plans.

Q. Okay. What was the position you held immediately before group brand director.

A. The title was senior brand manager.

Q. And approximately what years did you hold that position?

A. When you ask me what years, are you referring to the number of years or the actual --

Q. If you could give me both, to the extent that you can. I'm -- I'm looking for, --

A. Okay.

Q. -- really, if you could tell me the years in terms of calendar years.

A. Okay. I will say between 1988 and 1992, approximately.

Q. And what are -- what are the duties that you performed as senior brand manager?

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A. As senior brand manager, my responsibilities were to coordinate the day-to-day activities of the brands I was responsible for, and also to write the annual marketing plan.

Q. And which brands were those that were your responsibility?

A. Over the course of that time period, all the brands I've already mentioned; I've done it for Newport, Kent, True, Harley-Davidson and Style.

Q. What's involved in writing the annual marketing plan?

A. The annual marketing plan consists of identification of key issues, sales issue or any other types of issues that are involved with the brand, volume forecasting, marketing strategy, creative strategy, media strategy and plan development, promotional strategy and promotional plan development, and any other types of business-building issues.

Q. In your current position as group brand director, how many individuals report to you?

A. Approximately six.

Q. And what titles do they hold?

A. I have a senior brand manager, a brand manager, and an associate brand manager, an assistant brand

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manager and two secretaries.

Q. And as senior brand manager, did you have individuals who reported to you?

A. Yes, sir, I did.

Q. And what would those have been, what titles?

A. Brand manager.

Q. Now you mentioned that during the period of 1988 to 1992, approximately, you had senior-brand-manager duties for Newport, Kent, True, Harley-Davidson and Style. Would those have been at different times within that period, or together?

A. Some together and some at different times.

Q. When you had some of them grouped together at one time, would you have had more than one brand manager reporting to you?

A. I believe, yes, at one point in time, yes.

Q. And what was the position that you held immediately before senior brand manager?

A. Brand manager.

Q. What years did you hold that position?

A. I would say the four prior years, so anywhere from nineteen ninety -- '84 to 1988.

Q. And what brands did you manage?

A. Newport.

Q. Any others during that time period?

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A. I -- I don't -- I don't recall. I think it was primarily Newport.

Q. And what are the job duties of a brand manager?

A. Primarily to coordinate the day-to -- day-to-day activities of the brand's marketing plan, and also assist in the development of the annual marketing plan.

Q. So you as a brand manager have primary responsibility for executing the marketing plan for that brand?

A. Yes, sir. And also in helping developing the brand plan.

Q. Prior to 1984 what position did you hold with the company?

A. An associate brand manager.

Q. Which years?

A. Approximately a year and a half.

Q. So sometime, perhaps, in '82 to sometime in '83 or early '84, somewhere in there?

A. Where did we end up? At 1984, correct?

Q. Correct.

A. So probably towards the end of 1982. And I could be a year or two off here, I don't know.

Q. Okay. As an associate brand manager, what brands did you manage?

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A. Newport.
Q. Any others?
A. No, sir.
Q. And did you have individuals who reported to you in that position?
A. I did not.
Q. To whom did you report?
A. To a brand manager.
Q. And prior to being an associate brand manager, what was your position with the company?
A. Assistant brand manager.
Q. What years?
A. Also approximately a year and a half.
Q. So sometime, perhaps, in 1980?
A. No.
Q. Or '81?
A. It would be, yeah, sometime at the end of 1981.
Q. Okay. And which brands were you involved with?
A. Newport.
Q. What duties did you have as an assistant brand manager?
A. Just to assist in the execution of the day-to-day marketing plan.
Q. What kind of activities as an assistant brand manager does that involve in the day-to-day execution

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of the marketing plan?

A. Typically it involves sales analysis, which tracks sales on a daily basis and reports it weekly, and the other primary responsibility would be to manage the evaluation and approval of all of the mechanicals that are developed to execute advertising and promotional plans.

Q. What do you mean by the term "mechanicals?"

A. The mechanical is a board that represents the type of promotion or the type of advertising that we hand over to our production group, and they use that mechanical to produce a particular ad or a particular promotion.

Q. What do you mean when you say it's a board?

A. It's exactly that. It's a cardboard piece that has type and any other types of components on it that are turned over to production for reproduction.

Q. You're referring now to a board that -- that has the layout of some sort of a -- of an advertisement, or what is it that's physically on the board?

A. Exactly what you've said.

Q. Okay. And so for each type of ad -- advertising, if it were going to be billboard or print media, there would be a layout board of that kind that would set forth what the advertisement

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itself would actually look like?
A. Yes, sir.
Q. And what role would you play in actually producing the -- the materials that -- that appear on the board?
A. Only in terms of getting those mechanicals, retrieving those mechanicals from our advertising agency, and also checking those mechanicals for layout and for all the legal requirements involved.
Q. Okay. Those were not actually prepared in-house at Lorillard, however?
A. No, they were not.
Q. And what agencies were you working with?
A. Back at that time, MCA Adverising.
Q. Okay. Any others that you worked with other than MCA?
A. No, sir.
Q. How would the information that was put on to the boards by MCA be developed by them?
A. They have, as we have in brand marketing, a manual, a marketing regulations manual that we use that we refer to that would give us the appropriate warning rotation schedule, the appropriate warning size, the appropriate T&N's as well as the appropriate size for each different size mechanical.

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Q. And now you're describing in your answer there a regulations manual for warnings and tar and nicotine levels; correct?

A. Yes, sir.

Q. Okay. In terms of the rest of the layout on the board, which you might call the creative part of that, --

A. Uh-huh.

Q. -- how is that implemented or -- or performed by the advertising company?

A. Well that starts with a -- the approval of a -- what we call a comprehensive, which actually lays all of the elements in place, typically in color. That goes through an approval process from the assistant brand manager up through the president of the company as well as our legal department, and once that has been approved, the agency would take that comprehensive and actually, then, turn that into a mechanical.

Q. What is the difference between the look of a comprehensive and the look of a mechanical in terms of its appearance?

A. A mechanical is just a black-and-white stat of a visual or type and warning and T&N's, all the appropriate legal requirements laid out on a board,

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also has size requirements there, so when you pass it on to the production company, they know what size they need to -- to -- to develop.

Q. And how does that vary from the comprehensive that you referred to?

A. The comprehensive is just a piece of paper that looks like an advertisement would in a magazine.

Q. Is the comprehensive laid out, physically laid out in any different way from -- from the mechanical?

A. No, other than usually the mechanical is in scale, to the size, and typically the comprehensive is, within reason, the size of the actual piece.

Q. So in terms of the development of the creative part, that's actually done at the stage of the comprehensive rather than at the mechanical?

A. Re -- repeat that, please, for me.

Q. Sure.

The development of the creative part of the -- of the advertisement is actually done at the stage of the comprehensive then?

A. Yes, sir, it is.

Q. And who performs the work that goes into the creative aspect of the advertisement?

A. The advertising agency that's responsible for that particular brand.

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Q. And is that done at the agency outside of Lorillard, or -- or does the agency come to Lorillard and work with individuals at Lorillard in preparing that creative?
A. No, it's typically done outside of Lorillard at the agency.
Q. And how is the agency involved with Lorillard in putting the creative together before it actually gets a first draft put on to paper?
A. There's typically a -- a discussion prior to the development of an advertisement to talk about that advertisement, and typically we lay out the objectives for that particular timeframe with that particular series of advertisements.
Q. Who's involved in that from Lorillard?
A. Usually the brand manager and the creative people from the agency.
Q. When you used the term "objectives" to describe what is laid out for the outside advertising people, what -- what do you mean by that term?
A. As I mentioned, it could be a verbal discussion about what that particular advertisement should accomplish. For a -- an established brand that has an established advertising platform, it's typically executional. If it's, for example, Newport, and

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Newport has a certain copy platform that it's used for years, it's -- it's usually a discussion of the types of visuals and things that we would use for a particular time period to express the platform of the campaign.

Q. How is the campaign platform itself developed?

A. It's developed with the brand marketing group and it's developed based on the marketing objectives for the particular brand.

Q. And how are the marketing objectives developed?

A. They're --

It all starts with the brand plan, and based on the brand plan, you've laid out some key issues that affect a certain brand. And based on those key issues, typically you write objectives to address some of the issues, and that spills into creative as well.

Q. Who develops the brand plan for a brand?

A. The brand manager is primarily responsible.

Q. You've been brand manager and, therefore, I take it, you've developed some brand plans in the past.

A. Yes, sir.

Q. How do you go about doing that?

A. We typically start around June of every year for the following year. We start by evaluating the

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current brand plan, we evaluate the sales performance of our brands, we look at the competitive framework, and based on all of that, we look at what types of opportunities we have for the following year, and based on that evaluation we adjust the current year's brand plan to reflect opportunities in the marketplace.

Q. When you refer to -- to opportunities available for the following year, what -- what kinds of things fall into the category of opportunities when you're looking at developing a brand plan for a year?

A. Sales volume opportunities. If, for example, there is a particular packing style that is showing growth in the industry, you might choose to identify areas where we have the opportunity to increase our business.

Q. Let me just interrupt you for one second there. Packing style, you're referring now to like the box?

A. Yes, sir, the box or the one hundreds, soft pack, that type of thing, yes.

Q. Okay. What else?

A. Maybe promotion in the marketplace.

Q. What do you mean by "promotion?"

A. The types of promotion that we might use in order to attract a competitive smoker to switch, and

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that's typically based on a review of what our competitors are doing in the marketplace for that particular brand.

Q. What -- what do you mean, though, in terms of promotion? What is a promotion?

A. A promotion would be, for example, a 30-cent-off pack coupon.

Q. What other kinds of things fall into the general category of promotional activities?

A. Carton coupons.

Q. And what about either -- item giveaways like hats, lighters, that sort of thing, does that fall into the category of promotion?

A. It does fall into the category of promotion.

Q. Anything else that falls in that category?

A. Well "promotion" is a pretty broad term. It could be media-delivered promotions, it could be direct-mail advertising, it could be specifically how you merchandise your brand at retail.

Q. In terms of the -- the displays for the brand at retail?

A. That's what I mean by "merchandising," yes.

Q. Does that involve both a function of location for the display as well as the visual for the display?

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A. It involves the location.
Q. Primarily location?
A. Yes.
Q. What kinds of considerations go into display location?
A. I don't -- I don't -- I don't know. The -- the -- that --
That area of responsibility comes out of our merchandising group, and they determine display placement for us.
Q. Okay. Anything else that would -- you can think of we haven't talked about that goes into the whole process of developing the marketing plan for a year?
A. Other than the types of things I'd mentioned before in terms of the components of the plan?
Q. Right.
A. No, I think I've pretty thoroughly explained to you all the different pieces of that.
Q. All right. Prior to your position as assistant brand manager, what was the position you held?
A. I spent the first six months at Lorillard as an outdoor field representative for the company.
Q. What did you do in that position?
A. I traveled the country for Lorillard, evaluating the outdoor billboard showing.

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Q. When you say "traveled the country," did you literally have the whole country?
A. I think over six months I just about ended up everywhere.
Q. In -- in all 50 states?
A. Probably not all 50 states, but north, south, east and west, yes.
Q. Pretty close, huh?
A. Yes.
Q. And in terms of evaluating the outdoor billboards, what -- what job duties did you have there?
A. Primarily the duties were to look at the location of the outdoor billboard and deal with any type of issues that might be involved with any type of distractions.
Q. Such as something obstructing the view from a logical point that the billboard would be viewed?
A. Yes. Or as well as a competitive advertisement that might be within sight, and as well as we were very careful to be sure that our outdoor billboard placements were within our outdoor guidelines as far as placement.
Q. Okay. And what -- what are those outdoor guidelines that you had?

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A. The 500-foot rule from schools and playgrounds and churches; no billboards could fall within that 500-foot area.

Q. You're now talking about measuring distance to the billboard from the school, the grounds, the edge of the school grounds?

A. Yes, sir.

Q. Or from the edge of the -- did you say playgrounds as well?

A. Yes, sir.

Q. Okay. How would you --

How would you go about measuring that?

A. The measurement was done primarily by the outdoor company that you hired to provide a showing for you, and they would provide you with what they call a spotted map that would lay in all the different billboard locations for you.

Q. During that period of time were there parts of the country that -- that had billboards that were 500 feet or so from -- from a school? I'm talking about at least 500 feet, but in that range of being, all right, it's 501 feet, it's -- it's legal, it's -- it's within the range. Were there billboards that were just outside the 500-foot range?

A. I -- I do not know. All I know is that all of

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our billboards were within whatever the safety factor was.

Q. In terms of the travels that you did in that -- that six-month period, you physically saw the billboards for the company that were actually up and in -- in existence?

A. Yes, sir.

Q. Were there some that, based upon your observation, could be seen even though 500 feet away, but could be seen from a school?

A. To the best that I can remember today, I don't believe so. We were very, very careful about that. And with our suppliers, that they -- that those -- that type of thing did not happen.

Q. Were there some that were located, based upon your observation, say, within four or five blocks of a school?

A. I do not recall.

Q. You don't recall one way or the other?

A. I go back to what I said, that we were very, very, very careful to be sure that all of our billboards were -- were within our -- our own regulations.

Q. Well I --

That's the 500-foot regulation you're talking

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about.

A. Yes.

Q. I understand that. Now my question is just a little bit different in terms of your being on the scene and physically observing these.

A. Uh-huh.

Q. I'm trying to get some kind of an idea from you as to location of some of the billboards in terms of their proximity to -- to schools.

Were there some that were located within -- I -- I said several blocks, say a quarter mile of schools?

A. I -- I honestly don't recall if there were or not.

Q. One way or the other --

A. Yeah.

Q. -- as you sit here today.

A. All I know is that we were very careful, again, to be sure that they were not in line of sight of anything that was a school or playground or a church.

Q. Well did your outdoor requirements say that they had to be more than 500 feet from the school yard, or not within line of sight of the school yard, or both?

A. Both.

Q. So they had to be both more than 500 feet away and not visible from any point on the -- the school

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property?
A. As I recall it today, yes, that was true.
Q. And where was that requirement contained?
A. I don't -- I don't know. I do know that in our marketing regulations manual it is -- the 500-foot rule is stated there. I do not know if the line-of-sight rule is stated there, too. I think that was just a judgment that we used.
Q. Okay. And when you say it's a judgment that was used -- or that we used, who -- who do you mean? Who is "we?"
A. Any outdoor field representative that represented Lorillard.
Q. How many were there when you were in that position?
A. Hmm. I would say about four of us at the time. Maybe five.
Q. Okay. Certainly while you can't recall specifically the -- the distance away, do you recall that there were outdoor billboard advertisements for Lorillard products that were on highways or streets that were the normal routes for access by buses and cars that deliver children to the schools?
A. I would assume, yes. And I say that because we would go into a marketplace and we'd want to have

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what they would call a 50 showing, that means we wanted to reach 50 percent of the population over a given month. So those boards were situated by the outdoor plan around the marketplace to represent that. So --

Q. When you say 50 percent of the market, are you referring to the entire market, or some subgroup of a particular geographic location?

A. We're talking about 50 percent of the population as identified by the plan.

Q. So if it was a community of a hundred thousand persons, your plan would have required the placement to be within an area where it was likely to be seen by 50,000 people over the course of some period of time?

A. That's fair.

Q. And what was the time period that was generally utilized for the 50 percent requirement?

A. I believe a month, over the course of a month.

Q. And as a result of that requirement, it's fair to assume that you would generally have these billboards placed in relatively high-traffic areas?

A. Yes, some in high-traffic areas.

Q. Well if they weren't in high-traffic areas, there wasn't much chance you were going to get half

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of the population to go by them within -- within a month; correct?

A. Not necessarily.

Q. What would be an example of a -- of a non-high -- (clearing throat) excuse me -- high-traffic area where you may place a billboard that would be likely to be seen by more than -- or as much as 50 percent of the population of -- of a community?

A. A -- a side street, a street off of a main thoroughfare.

Q. How would you go about deciding the volume of traffic that would go by a particular site?

A. That was primarily determined by the outdoor plant in the marketplace.

Q. And -- and those are the folks who actually owned the billboards' locations themselves?

A. Yes, sir.

Q. Was there a limitation on the kinds of -- of advertising that could go on an outdoor billboard as a matter of Lorillard policy?

A. I think you need to explain that to me further --

Q. Sure.

A. -- as far as what you mean by "limitations."

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Q. Could you put a creative board idea that you would use in a print media location on an outdoor billboard if -- if you thought it was appropriate?
A. If it could be executed appropriately for that media form, yes.
Q. Okay. Was there any prohibition about the kinds of creative that could be used on billboards as opposed to the kind that could be used in -- in print media?
A. No.
Q. Was there any kind of policy at Lorillard that dealt with the creative that could be used on a billboard, depending upon where it was located within a community?
A. No.
Q. So that the same creative could be used on a freeway as on a less-busy side street, somewhere more in the residential area of -- of the community?
A. Yes, it could be.
Q. Was there any prohibition against using any particular type of creative on billboards that were located outside of 500 feet, but relatively close to a -- a park or a school?
A. No. The only thing that -- that dictates the type of creative is the type of outdoor unit that we

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use. What you do on a smaller billboard you might not do on a larger billboard.

Q. Okay.

A. But we do abide -- abide by rules specifically as part of our -- our regulations manual in terms of the types of advertising that we -- that we do and the appeal of that advertising.

Q. In terms of that, you're saying you abide by that in all the advertising that you do.

A. Absolutely.

Q. My question is, though, that in terms of different types of spots where advertising may be purchased and -- and seen, there is no rules that say one kind for billboards, a different kind for media, other than the ability to execute the ad appropriately in the -- in the space available.

A. Yes.

Q. That was -- the billboard, outdoor billboard position -- your entry-level position with the company?

A. Yes, sir.

Q. Did you have other employment prior to starting with Lorillard?

A. Yes, I did.

Q. And by whom were you employed?

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A. I was employed by Bamburger's Department Stores.
Q. What did you do there?
A. My job title was assistant manager, training and communications.
Q. How long were you with Bamburger's?
A. About a year.
Q. Did you have employment outside of -- or prior to Bamburger's?
A. I did not.
Q. What's your educational background?
A. I graduated from Syracuse University with a B.A. in advertising and marketing.
Q. What year?
A. I graduated in 1980.
Q. Have you ever given a deposition before?
A. Yes, sir, I have.
Q. How many times?
A. Once before.
Q. What kind of a case?
A. It was in the Arch case.
Q. Oh, you testified in the Arch case?
A. Yes, sir.
Q. Do you recall approximately when that was?
A. I want to say May 30th.
Q. Of this year?

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A. Of this year, yes.
Q. What did you do to prepare for the deposition here today?
A. Three things: I've met with John Monica, my attorney here, on a couple occasions; I reviewed my deposition from the Arch case; and I read some of the Lorillard's marketing regulations manual, reviewed some of the pieces of that.
Q. You said you met with Mr. Monica on two occasions?
A. Two or three occasions, yes.
Q. For how long?
A. Couple hours each time.
Q. Did you review any documents in those meetings with Mr. Monica other than the marketing regulations manual that you mentioned?
A. Yes, a few.
Q. Do you recall what those documents were?
A. Actually I do not recall exactly what they were.
Q. Do you recall the general kinds of documents that they were?
A. Yes. Some documents related to advertising, some documents related to brand demographics.
Q. Had you seen any of the documents that you reviewed with Mr. Monica before you reviewed them

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with him?
A. Maybe one or two of them possibly.
Q. Did you review any other deposition transcripts other than your own?
A. I did not.
Q. Did you bring any documents with you today?
A. I did not.
Q. The Lorillard marketing regulations manual that you referred to reviewing, --
A. Uh-huh?
Q. -- is that a manual that you have in your possession? Not -- I don't mean physically today, but that you keep in your possession at Lorillard?
A. Yes, sir.
Q. What does that document contain?
A. It contains the advertising code that we abide by. It contains all the information required to establish warning rotations, --
(Discussion off the stenographic record.)
A. -- warning sizes, T&N's, the things I mentioned to you before about T&N sizes, how to conduct market research, how to conduct sweepstakes and contests, and maybe a couple other things that I can't remember right now.
Q. Do you know whether that marketing manual has

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been produced in discovery in this litigation?
A. I do not know that.
Q. Do you recall at any time in the past three years where anybody came to you requesting from you documents for production in the Minnesota smoking-and-health case?
A. I don't know what case it was for, but yes, to documents being collected.
Q. When was that?
A. About a year or two ago, actually.
Q. And do you recall what documents of yours you turned over?
A. No, I do not. They took what it is that they needed to take.
Q. Did you get a -- a list of any kind that identified the documents of yours that were taken for that production?
A. I did not.
Q. Were your documents taken for purposes of copying and then returned to you?
A. Yes, sir.
Q. Were there any documents that you had in your possession that were taken from you and not returned to you?
A. Not that I'm aware.

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Q. You'd mentioned a few brands of Lorillard cigarettes here this morning. What is your understanding of the largest-selling brand that Lorillard makes?

A. It's Newport cigarettes.

Q. Do you know what the market share is that Newport has of the marketplace of cigarettes?

A. Yes, I do.

Q. And what is that?

A. Approximately 6.3 share points.

Q. Where does that place it in the overall ranking of -- of brands nationally?

A. It places it at -- as the number-two brand in our industry.

Q. And what is the number-one brand in the industry?

A. That would be Marlboro.

Q. That's a Philip Morris product?

A. Yes, sir.

Q. Do you know for how many years Newport has been the number-two selling brand?

A. Approximately two years.

Q. And -- and what was the ranking of Newport before it was number two?

A. Number three.

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Q. Do you know how long it was the number-three ranking brand?
A. Maybe two or three years.
Q. And what -- what rank did it have as a brand nationally before it was the number-three ranking brand?
A. As I recall today, either the fourth- or the fifth-largest.
Q. So that takes us back some four to five years. Do you know how long it held either the fourth or fifth ranking brand spot?
A. No. It was for a while.
Q. So there has been a reasonably steady progression of brand ranking for Newport over the years that you've been involved with the brand?
A. Yes, sir.
Q. Do you know how many smokers are represented by a share point?
A. I do not.
Q. Do you know what the annual number of Newport cigarettes are that are sold by Lorillard every year?
A. Yes, I do.
Q. How much is it?
A. This year, approximately 30 billion cigarettes.
Q. What's the next largest-selling brand after

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Newport that Lorillard makes?
A. Oh, right now I believe it would be either Kent or Old Gold.
Q. And in terms of the number of cigarettes for that brand sold on an annual basis, do you know how many that would be?
A. Approximately four billion.
Q. Now you mentioned the marketing guidelines manual that you have in your office. Correct?
A. Yes.
Q. And you said contained as part of that was the -- I think you referred to it as the advertising code?
A. Yes, sir.
Q. Let me show you a document that has been previously marked in this litigation as Plaintiffs' Exhibit 1024. It's a document that is entitled "CIGARETTE ADVERTISING CODE," bears Bates numbers MNAT00608606 through 8614.
Have you seen this document before?
MR. MONICA: Bruce, a matter of clarification on Exhibit 1024, the handwritten notations on the first page, I take it, are not part of the code; correct?
MR. FINZEN: I don't know the exact source

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of the handwritten, other than it's the way the document was produced.

MR. MONICA: Okay. But did --

Does your question pertain to the handwritten notes in addition to the typeset portion?

MR. FINZEN: Well my question pertains to this document that he's looking at, whether he's seen this document before or documents like it, whatever he can recall.

A. This particular one, no. But some of this, as I'm briefing it quickly, I've read in other formats.

Q. This is not the advertising code that you have currently in your manual?

A. I believe the content is more or less what's in my manual, yes.

Q. Okay. Are there any parts of it, starting at the page that is -- at page number one, second page of the document, that is -- and going through to the end -- the -- the actual substance of the code that you do not recognize as being part of the code that you have in your manual?

A. The only piece that looks somewhat unfamiliar to me is "The Code Administrator," Article II.

Q. Okay.

A. Of course that doesn't mean it's not there, it

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just means it's not familiar to me.
Q. I understand.
A. And possibly Article V.
Q. Okay. In terms of the -- the rest of it, that looks, to the best of your recollection, as being the same as what you have in your manual today?
A. Yes, sir.
Q. Are you aware of the -- the history of the origin of the Cigarette Advertising Code?
A. Not -- not specifically, no.
Q. Do you understand that it was a code that was adopted voluntarily by the cigarette industry in the 1960s?
A. Yes, I do.
Q. Do you know whether Lorillard had been a participant or a signatory to the advertising code of the industry from the very inception of the code?
A. I believe so, yes.
Q. Turn, if you would, please, to page four, which has article Roman IV at the top.
A. Uh-huh.
Q. This part of the code, in part -- section 1.(a) there, refers to certain places where cigarette advertising shall not appear. See that?
A. Uh-huh.

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THE REPORTER: Your answer?

THE WITNESS: Yes, sir.

Q. Now I will represent to you that this is a version of the code that goes back to the '60s, and therefore it references advertising not appearing on television and radio programs directed towards persons 21 years of age. Is that part still contained in the code that -- that you have in your manual?

A. I -- I -- I don't know. I would assume yes, definitely the part about 21 years of age, --

Q. Okay.

A. -- that does still appear, yes.

Q. But certainly television -- I'm sorry.

Television advertising of tobacco ended a number of years ago, correct?

A. Yes, sir.

Q. Before you joined the company?

A. Yes, sir.

Q. But in terms of the advertising for Lorillard being not intended to appear in publications directed primarily to persons under 21 years of age, that's -- that's still a part of the code that Lorillard follows?

A. Yes, sir.

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Q. And the second part of that (a), little Roman (ii), in spot announcements during any programming, is there still a provision that applies to programming announcements of any kind?

A. Are you referring to programming announcements on television?

Q. Or radio is what this refers to.

A. And your question is --

Q. Is that still part of the code that Lorillard has in its manual today?

A. I -- I believe so. Again, I don't know if it's -- it's written there specifically, but we abide by that code, yes.

Q. I understand. But do you have any understanding that there is or isn't any television or radio advertising of cigarettes today in the industry generally?

A. There is not.

Q. There is not.

A. Right.

Q. Then the -- the third part under (a) is advertising shall not appear in school, college, or university media, is that still part of the advertising code for Lorillard today?

A. I believe so.

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Q. And the fourth part under (a), "In comic books, or comic supplements to newspapers," is that still the advertising policy of Lorillard today?
A. I believe so.
Q. Does Lorillard follow a general procedure of not directing the content of its advertising, whether it be in media primarily directed to persons under 21 age -- 21 years of age or not, does Lorillard follow a general procedure of not directing the contents of its advertising to individuals under the age of 21?
A. Yes, we do.
MR. MONICA: Bruce, when you -- we've been an hour. I know I could use a five-minute break to use the facilities. When you reach a point.
MR. FINZEN: Okay.
BY MR. FINZEN:
Q. The second part there under section 1.(b) talks about samples not being distributed to persons under 21 years of age. Does --
Does Lorillard still engage in cigarette sampling?
A. We do not.
Q. To any age group?
A. To any age group, we do not.
Q. When is the last time that you engaged in

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cigarette sampling as a company?
A. I would say a year to two years ago.
Q. Prior to that time, when cigarette sampling was still ongoing, was it Lorillard's advertising code policy to not provide sample cigarettes to persons under 21 years of age?
A. Yes, sir.
Q. And the next part under section 1.(c) says that samples will not be "distributed or promotional efforts -- efforts conducted on school, college, or university campuses, or in their facilities, or fraternity or sorority houses." Do you see that?
A. Yes, sir.
Q. Is that still part of the Lorillard advertising code today?
A. Yes, sir.
Q. And when cigarette sampling was still being done, did Lorillard follow that policy?
A. To the best of my -- my knowledge, yes, sir.
Q. The next section under section 1. is (d), it says that "Cigarette advertising shall not represent that cigarette smoking is essential to social -- social prominence, distinction, success, or sexual attraction." Do you see that?
A. Yes.

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Q. Is that still part of the Lorillard advertising code today?
A. Yes, sir.
Q. And does Lorillard follow that, to the best of your knowledge?
A. Yes, sir.
Q. And the next part, (f) -- or I'm sorry, (e), refers to persons depicted as smokers in ads not -- shall not -- shall be at least twenty-five years of age and not be dressed to appear less than 25 years of age, is that part of the Cigarette Advertising Code for Lorillard today?
A. Yes, sir, it is.
Q. And does Lorillard follow that, to the best of your knowledge?
A. Yes, we do.
Q. (f) refers to cigarette advertising using attractive, healthy-looking models, or illustrations provided of such persons, provided there is no suggestion that their attractiveness, appearance or good health is due to smoking. Is that still part of the advertising code today?
A. Yes, sir.
Q. (g) under 1. says "No cigarette advertising shall contain a picture or an illustration of a

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person smoking in an exaggerated manner." Is that still part of the code today?

A. Yes, sir.

Q. (h) under 1. says "Cigarette advertising shall not depict as a smoker any person well known as being, or having been, an athlete." Is that still part of the advertising code today?

A. Yes, sir.

Q. (i) under 1. says "Cigarette advertising shall not depict as a smoker any person participating in, or obviously having just participated, in physical activity requiring stamina or athletic conditioning beyond that of a normal -- of normal recreation." Is that still part of the advertising code today?

A. Yes, sir.

Q. And (j) under 1. says that testimonials from athletes or celebrities in the entertainment world or other persons who are well known or have special appeal to persons under 21 years of age shall not be used in cigarette advertising. Is that still part of the advertising code of Lorillard today?

A. Yes, sir.

Q. And does Lorillard follow that, to the best of your knowledge?

A. Yes, we do.

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MR. FINZEN: We can take a break now.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MR. FINZEN:

Q. Mr. Lindsley, you recognize that in many states, if not most states, the legal age to smoke is 18; is that correct?

A. Yes, sir.

Q. And in spite of that, as I understand it, the advertising code that -- that Lorillard follows says that it will not direct its advertisements to persons under the age of 21; correct?

A. Uh-huh. Yes.

Q. And the reason that you do that is because you know, based upon your experience, that if you aim a marketing campaign for someone who is 21 years old, you are likely to have an impact from that campaign on persons who are under the age of 21; correct?

A. I do not know that, no.

Q. Well certainly if an advertising campaign is created and intended to have an appeal to someone who's 21 years old, you would expect that it might also have some appeal to someone who is 20 years old; isn't that correct?

A. It could possibly, but we don't develop it for

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that purpose.
Q. I -- I understand what your testimony is about not developing it for that. My question goes to: It's reasonable to assume, however, that something that would appeal to someone on their 21st birthday would have appealed to them the day before their 21st birthday as well.
A. That's a fair assumption.
Q. And perhaps the month before.
A. That's a fair assumption.
Q. And -- and perhaps for several months before their 21st birthday, if it appeals to them at that age, it may appeal to them in months before.
A. I don't know that.
Q. Is it a fair assumption that that may be the case?
A. You can make that assumption.
Q. Do you think it's a reasonable assumption to make?
A. I don't know if it is or not.
Q. Isn't that part of the motivation, though, behind why you don't appeal -- or why you don't direct advertising to appeal to 18-year-olds, who are legal smokers in many states?
A. I don't think I understand what you're asking me

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now.

Q. Because if you were going to direct your advertising to 18-year-olds for the same reason, a reasonable assumption might be that you would impact or have appeal to persons under the age of 18; isn't that correct?

MR. MONICA: Object, asked and answered.

MR. FINZEN: You may answer.

A. That -- I think that's -- that's reasonable to assume.

Q. And so part of the goal of the advertising campaign being directed to appeal to 21-year-olds was to provide a bit of a cushion to -- to try not to appeal those advertisements to under-age smokers; is that correct?

A. I think that's fair. It does provide us with a cushion, yes.

Q. Are you aware, based upon your experience with the company, that there were periods of time in the past where Lorillard did in fact advertise in areas that were directed to -- primarily to youth under the age of 18?

A. No, I'm not aware of that.

MR. FINZEN: Would you mark this next, please.

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(Plaintiffs' Exhibit 1260 was marked for identification.)

BY MR. FINZEN:

Q. Mr. Lindsley, I'm -- I'm showing you now two documents, one that has been marked as Plaintiffs' Exhibit 1260 and one that has been previously marked as Plaintiffs' Exhibit 463 in this litigation, and I would ask you to look first at Plaintiffs' Exhibit 1260 and tell me whether you have ever seen that document before?

A. Yes, I have.

Q. This is a document that is -- bears the name Williams Esty Company on the letterhead, a date of March 17, 1965, and it is written by a Mark -- looks like Byrne, B-y-r-n-e, to the advertising department at R. J. Reynolds Tobacco, and it bears Bates stamp number 501934737. When --

When is the first time you saw this document?

A. Last night.

Q. Had you seen it at any time ever before that in any files at Lorillard?

A. No, sir.

Q. And then the document attached -- I'm sorry. The next document, which is Plaintiffs' Exhibit 463, is this a document --

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And let me identify it for the record. It is a document that contains at the top of the first page "NETWORK TELEVISION PROGRAMS, AUDIENCE COMPOSITION, P. LORILLARD COMPANY, DAYTIME PROGRAMS," and it bears Bates numbers 501934748 through 4757.

Have you seen this document before?

A. Yes, I have.

Q. And when did you see this document?

A. Also last evening.

Q. If you look at the Bates numbers, you will see that these are numbered consecutively; that is, that Exhibit 1260 bears the Bates number immediately before Exhibit 463. And Exhibit 1260 refers to --

MR. MONICA: Bruce, I -- I don't think that's correct, unless I'm not reading mine right.

MR. FINZEN: You know, you're -- you know, you're right. I -- I stand corrected. They do not have the -- they do not have the sequential Bates number. There is a gap there.

Q. The Exhibit 1260, in a letter directed to the advertising department at R. J. Reynolds says, "Supplementing our correspondence on Audience Composition for nighttime network television programs, we are now attaching comparable information for daytime network programs purchased by P.

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Lorillard Company.

"You will note that some of these programs have a very high audience composition under 18 years of age. These programs are on CBS prior to 12 noon and the large percent of their viewers are indicated to be pre-school children." Do you see that?

A. Yes, sir.

Q. And the exhibit that is Exhibit 463 bears at the top a "NETWORK TELEVISION PROGRAMS, AUDIENCE COMPOSITION, P. LORILLARD, DAYTIME PROGRAMS." Do you see that?

A. Yes, sir.

MR. MONICA: I'd like the record to show there's an 11-page gap between these two exhibits.

MR. FINZEN: Yes.

MR. MONICA: All right.

BY MR. FINZEN:

Q. You say you -- you had not seen either one of these exhibits previously?

A. Previous to last night?

Q. Correct.

A. No.

Q. In terms of -- of Exhibit 463, the reference on the first page is to "Viewers 17 and Under (percent Total Viewers)," and then there are two columns, one

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"ARB" and one "NIELSEN," both of which bear the date January 1965 underneath the names "ARB" and "NIELSEN." Do you see that?

A. Yes, sir.

Q. And then there are some programs that are listed on the left-hand side of the page, and then numbers corresponding to those programs under the columns labeled "ARB" and "NIELSEN." See that?

A. Yes, sir.

Q. In this exhibit it appears that in either the ARB or the Nielsen column there are five television programs listed that had a percent of total viewers 17 and under. Do you see that?

A. Yes, sir.

Q. The first being Andy of Mayberry, which had a 50.6 percent under the column "ARB." See that?

A. Yes, sir.

Q. The next being Donna Reed that had a 51.6 percent under "NIELSEN?"

A. Yes, sir.

Q. The next being Father Knows Best that had a 50.5 percent under "NIELSEN?"

A. Yes, sir.

Q. The next being I Love Lucy that had a 59.4 percent under "ARB?"

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A. Yes, sir.
Q. And a 52.9 percent under "NIELSEN?"
A. Yes, sir.
Q. And the next one, The McCoys, that had a 50.3 percent under "ARB."
A. Yes.
Q. See that?
Assuming those percent viewer totals are accurate, would advertising of cigarettes to these programs with that viewer makeup be a violation of the advertising code that Lorillard adhered to?
A. Back in 1965, yes, I believe it would be.
Q. And have you ever had occasion while you have been with the company to understand that there were times in the past where advertising that was done by the company may have been displayed in ways that were violations of the code?
A. No, I'm not aware of anything like that.
Q. What is the method that Lorillard uses to determine whether, in today's advertising environment, an advertisement in a -- in a publication is going to be directed in a publication that might have a majority of -- of readers that would be under the age of 21?
A. We use circulation data that's published to help

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us understand what the circulation makeup by age would be for the magazines that we're interested in. That information gives us 18-years-of-age-and-older breakdowns.

Q. And who -- who is the manufacturer or the author of that circulation data?

A. I -- I -- I don't know who our media department uses as a resource. I would assume Nielsen might be one of them.

Q. But it is an outside resource, it's not in-house at Lorillard?

A. No, it's a syndicated research study.

Q. And is that available for virtually all publications that exist today?

A. I believe so, yes.

Q. And when you get that information, is it listed for a particular publication in a -- in a form that is similar to what's seen on Exhibit 463 here where it will list a particular publication and then a percent of readers that fall within a certain age group?

A. I believe so. But that's not information that I typically get. That information is developed through our media department.

Q. If you take a look at the second page of Exhibit

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463 and the pages that follow, there appear to be a breakdown of some of the data that appears on the first page by each of the programs that are listed on the first page. Do you see that?

A. Yes, sir.

Q. And, for example, turning to the second page, which is Bates stamp numbered, last four numbers, 4749, it lists "P. LORILLARD, COMPANY, quote, ANDY OF MAYBERRY, close quote, CBS-TV Monday through Friday, 11:00 through 11:30 AM" and then "Audience Composition." On the left-hand side it lists age groups of people starting at group -- age group two to five and running through -- looks like seven groupings of ages, including that one, up to a total of 50 plus. Do you see that?

A. Yes, sir.

Q. The information that you get today on a publication and the readership of a publication, does it break it down along groupings of ages similar to this?

A. Yes, but from 18 years of age and older --

Q. So --

A. -- only.

Q. -- it begins at age 18 only.

A. Yes, sir.

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Q. And does it list it in terms of percentage of readers within a particular age group, or percentage of the total readers of the magazine that are within that age group? How -- how is that done?
A. I believe it's as a percent of the composition of the particular publication.
Q. And in this particular situation that we're looking at in Exhibit 463, they say this one breaks it down by a number of -- of ages beginning at ages two through five. If you look at the Andy of Mayberry, which is on Bates page 4749, it would appear, looking at the "Per Cent Total Viewers" column --

See that column?

A. Uh-huh. Yes, I do.
Q. -- that the largest percent of total viewers for this program was the two- to five-year-old group.
A. Yes.
Q. Is that correct?
A. Yes, I see what's written there.
Q. And that would be 35.7 percent of the total viewers?
A. Yes.

MR. MONICA: Bruce, you're not representing that Lorillard produced this document; are you? It's

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an R. J. -- it says produced by RJR.

MR. FINZEN: It says what it says, John.

MR. MONICA: And you're not representing that Lorillard actually subscribed to these particular TV programs; are you?

MR. FINZEN: John, the document is produced in the litigation. I'm using it with this witness.

MR. MONICA: Well I mean you're just going --

You're asking him what he understands these columns --

MR. FINZEN: That's correct.

MR. MONICA: -- to mean --

MR. FINZEN: That's correct.

MR. MONICA: -- on a document that he said he saw for the first time last night.

MR. FINZEN: That's exactly what I'm doing.

MR. MONICA: All right.

BY MR. FINZEN:

Q. And if you turn to Bates page number 4752, the Donna Reed show page, --

A. Yes.

Q. -- it would appear again that the largest group by percent of total viewers of that program was also

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the two- to five-year-old age group?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Turn to the next page for Father Knows Best. Do you have that page?

A. Yes, I do.

Q. Again it would appear that the largest percent of total viewers by any age group was the two- to five-year age group?

A. Yes.

Q. If you turn two more pages to Bates page 4755 for the I Love Lucy program --

Do you have that page?

A. Yes, I do.

Q. -- it would appear again that the largest percent of total viewers age group was the two- to five-year-old age group?

A. Yes.

Q. And turn one more page to the page Bates numbered 4756 for The McCoys.

A. Yes.

Q. Again it would appear that the largest percent of viewers for any age group was the two- to five-year-old age group?

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A. Yes.
Q. As someone who has worked in advertising at Lorillard, can you understand how it would be possible, given the access to media ratings that you have today for publications, that Lorillard could have placed advertisements with television programs where more than 50 percent of the population viewing the program was under the legal age of smoking?
MR. MONICA: I'm going to object to the question. It assumes a fact not in evidence.
MR. FINZEN: Go ahead.
A. For one, I don't think that we've confirmed that Lorillard used these -- this information to advertise its brands on these particular shows.
Q. Okay.
A. I'm looking at this simply as a piece of information that was supplied by an advertising agency to Lorillard.
Q. Okay. Let me -- let me change my question slightly, then, so that we can clear that up. I want you to assume that Lorillard did advertise on these programs as demonstrated on this exhibit. I want you to make that assumption. Okay?
In making that assumption, as someone who is involved in advertising at Lorillard, can you

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understand how it would be possible, given the access that the company has to rating agencies of the kind you've described that you use today for publications, that advertisements could be placed on a program that had more than 50 percent of its viewers being under the legal age of smoking?

A. I have a little problem with this, because why would I assume that we did place advertisements here?

Q. Because I just asked you to make that assumption, that -- that's why.

A. But that's awfully hypothetical to assume that we would have. I'm saying that we wouldn't have.

Q. And -- and I'm asking you to say if this happened, assume that this happened, can you explain, given the access to ratings information you have, how that would be possible?

A. Well having not been there back in 1965, it's hard for me to know, even if we did use these, why we would have used them. Okay? Today, to the best of my knowledge today, we would not have used this information for the purpose of advertising.

Q. I -- I -- I think you're still not perhaps understanding my question. The question is not whether you would use this, the question is: If advertisements were placed with these television

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programs at this time period where the majority of the viewers were under the legal age of smoking, as -- as an advertising person, knowing the access that you have to ratings agencies that ranks the -- the readers today of publications, can you explain any way in which it could happen that an advertisement could be placed where the viewers of the program were going to be, the majority of them, under the legal age of smoking?

A. No, I cannot explain how that would happen. We would not do this today.

Q. And is the system that you have in place today of looking at the rankings, that you talk about are available to you, failsafe, so to speak, that if -- that you can rely on those rankings, and if they say the majority of readers are under a certain age, you don't advertise in that publication?

A. Well for one, I've said already that we don't look at circulation data under the age of 18, if that's what you're implying. We look at only circulation data from the age of 18 and up.

Q. Okay. But if the -- that data shows that the circulation data for age 18 and up is 33 percent of the readers of the magazine, would you advertise in that magazine?

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A. Eighteen and up?
Q. Yes.
A. That's 18 and -- and beyond.
Q. Right.
A. If 33 percent were 18 and above, would we advertise?
Q. Yes.
A. Again, we don't -- we don't look at the information beyond 18 plus, so the 18 plus is a hundred percent factor, so all I would know is that smokers who are people 21 to 34 years of age represent 40 percent of that hundred percent base.
Q. Correct. And if --

The hundred percent base is all the readers of the magazine?

A. The hundred percent base here would be -- would be circulation 18 years of age and older.
Q. Okay. So if you see circulation 18 years and older, if you look at all of the ages 18 and older, it will equal a hundred percent; correct?
A. Yes. Yes, it would.
Q. And it may tell you that 26 percent are 18, 12 percent are 19, et cetera, for ages above 18; correct?
A. Yes, it would.

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Q. In that situation, will you place an advertisement if it shows that age of the readers between 18 and 20 are more than 50 percent of the publication?

A. We would not. And we would also use editorial content as a guideline.

Q. And what do you mean by that?

A. The nature of the articles in the magazine.

Q. How are --

How do those play a role as a guideline in deciding whether you will advertise?

A. Just a judgment call in terms of who we thought the article and the general contents of the magazine might be appealing to.

Q. And if you look at a Nielsen rating, for example, for a publication and it says that 20 percent of the total readers are between the ages of 18 and 20, would you consider that to be an appropriate magazine to advertise a Lorillard product in?

A. If 80 percent of that readership were 21 years of age and older, yes.

Q. Okay. But what that tells you is 80 percent of the 18-and-older readership is older than 20; correct?

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A. Yes.
Q. Doesn't tell you what percentage of the readership in total is comprised -- that 80 percent comprises; correct?
A. Restate that again.
Q. Sure.
The information, as I understand it, that you rely on tells you what percentage of the readers 18 and older are -- you can calculate what percentage of the readers 18 and older are 21 and older; correct?
A. Yes.
Q. But that doesn't tell you what percentage those 21-year-old-and-older readers are of the total readership of the magazine; correct?
A. In your mind, the total -- the total circulation goes below 18?
Q. Correct.
A. No, it does not tell us.
Q. So if 70 percent of the readers in the 18-and-older category are 21 and older, that may or may not comprise 50 percent or more of the overall readership of the magazine; correct?
A. I don't -- I don't know.
Q. And because you don't know, it's never possible for you to tell what overall percentage of readers of

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the magazine are 21 and older.
A. Again, we don't -- we don't study circulation data under the age of 18 years of age, but we do use that information as a percentage of total circulation in combination with, as I mentioned, editorial content and our best judgment to drive our -- our magazine selection.
Q. Okay. What magazines today does Lorillard currently advertise products in?
A. We use magazines like Sports Illustrated, The Star, The Inquirer, People Magazine, Family Circle, Ebony Magazine, Essence Magazine, Penthouse Magazine. That's pretty much it. There are a couple others I'm sure that I missed, but that's a range of what we use.
Q. With regard to Sports Illustrated and People magazines, has Lorillard ever attempted to conduct any kind of a study to determine what the overall percentage readership is of those magazines that are under the age of 21?
A. Under the age of 18, no, we have not.
Q. Do you have a -- a belief that there is a relatively high number of high-school-aged students that read both Sports Illustrated and People Magazine? And I'm saying now you, you personally.

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A. I'm -- I'm not sure. I'm not sure. I'm sure some do, but I don't know what that would mean in percentage.

Q. Is there some reason that Lorillard does not attempt to find out the percentage of readership of a publication that is under the age of 18?

A. Only because we don't aim our advertising at anyone under the age of 21, so we don't research that group.

Q. So there's no other -- other reason than that that you're aware of?

A. That's the primary reason why, yes.

Q. In the case of -- of publications that are popular publications like Sports Illustrated and People Magazine, did you ever consider that the -- the failure to do that research might actually have the opposite effect; that is, not being able to assure yourself that the majority of the readers that see that magazine are under the age of 18?

A. If our judgment told us, in looking at those magazines editorially and based on the advertisers that advertise in it, led us to believe that a large number of readers might be under the age of 18, we would not use them.

Q. And so I can take it from your answer, then,

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that in the judgment of Lorillard, you believe that a large number of readers of Sports Illustrated and People Magazine are not under the age of 18.

A. Yes, sir.

Q. Are you familiar with the government statistics that indicate that of all smokers, approximately two-thirds of those smokers began smoking before the age of 18?

A. I am not.

Q. Are you familiar with the government statistics that indicate that there is only approximately a five percent chance that a smoker who hasn't begun smoking before the age of 24 will ever start smoking?

MR. MONICA: I'm going to object to this question and the former one, assumes a fact not in evidence or several facts not in evidence. This is just your statement that there are such statistics. Are you asking him if he's aware of any such statistics?

MR. FINZEN: That's what I'm asking him.

A. I am not.

Q. No one at Lorillard has ever brought that to your attention?

A. Nobody has.

Q. And you've never seen any documents or data at

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Lorillard that would indicate that to you, that there -- that -- that the people generally, if they are smokers, begin -- the majority begin smoking before the age of 18?

A. Yes, I am aware of one particular piece of research done.

Q. Okay. And what is it that you're referring to?

A. It was a document, I would say, 15 years back approximately, maybe 20 years back, by a woman by the name of Shoi Dickinson, that was doing a research study among smokers 18 years of age and older, and she reported in that study some of the facts that you -- or some of the information that you've just mentioned.

Q. Let me show you what's previously been marked in this litigation as Plaintiffs' Exhibit 1031. This is a document that on the first page says "RJR SECRET, No. 386, STRATEGIC RESEARCH REPORT," from Diane Burrows, dated February 29, 1984, and it bears Bates stamp numbers 501928462 through 8550.

Is this a document that you have ever seen before?

A. No, sir, it is not.

Q. This was not a document that you reviewed in preparation for your deposition here today?

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A. No, it is not.
Q. Turn if you would, please, to the -- it's about the third page in, it's called "MANAGEMENT SUMMARY" at the top.
A. Okay.
Q. Do you have that page in front of you?
A. Yes, I do.
Q. In this --
In this report that is from Diane S. Burrows, Ms. Burrows writes, under "THE IMPORTANCE OF YOUNGER ADULT SMOKERS" heading --
Do you see that?
A. Yes, I do.
Q. It says, "Younger adult smokers have been the critical factor in the growth and decline of every major brand and company over the last 50 years. They will continue to be just as important to brands/companies in the future for two simple reasons." And then there are two bullet points there. See that?
A. Yes, I do.
Q. "The renewal of the market stems almost entirely from 18-year-old smokers. No more than five percent of smokers start after age 24." See that?
A. Yes, I do.

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Q. And the second bullet point says, "The brand loyalty of 18-year-old smokers far outweighs any tendency to switch with age." Do you see that?

A. Yes, I do.

Q. With regard to the bullet point that talks about the renewal of the market, is it your understanding at Lorillard that the renewal of the cigarette market comes almost exclusively from beginning smokers?

MR. MONICA: I'm going to object to the -- to the form of the question. This document appears to be an RJR --

MR. FINZEN: That's all you have to say, John.

MR. MONICA: Hmm?

MR. FINZEN: All you have to do is say object to the form.

MR. MONICA: Appears to be an RJR document. I think that you can ask him a question on his understanding of the, quote, renewal market, if there is one, without trying to make it appear that this document --

MR. FINZEN: John --

MR. MONICA: -- was produced by -- that this is a document he previously mentioned that he may have seen.

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MR. FINZEN: John, your objection, speaking objection is inappropriate and you know it. Limit your objection to form.

MR. MONICA: Why don't you just ask him a specific question?

MR. FINZEN: Because I'm taking the deposition and I'll take it the way I want to. Your role is to object and say form, and you know that.

MR. MONICA: I am objecting to the form of this question, as I said, for the reasons I said.

MR. FINZEN: I will re-ask the question.

BY MR. FINZEN:

Q. Sir, with regard to the bullet point that talks about the renewal of the market, is it your understanding at Lorillard that the renewal of the cigarette market comes almost exclusively from beginning smokers?

MR. MONICA: Same objection. Go ahead and answer.

A. It is not my understanding.

Q. What is your understanding of the way in which the market for smokers is renewed?

A. The market -- the re --

The market for any brand would be switchers from other brands, someone that's currently smoking an

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existing brand switching to one of our brands.
Q. And as those people who are smokers who switch grow old, quit and/or die, where do new smokers come from?
A. I don't know where new smokers come from. We're also in a declining industry.
Q. You would agree, would you not, that there are people every year who begin smoking that didn't smoke last year or ever before in their life? Would you agree with that?
A. I can only assume that there are people that start smoking.
Q. And as to those individuals, they are new smokers that are going to be coming into the cigarette marketplace looking for brands to smoke; correct?
A. Yes, they would be. Yeah.
Q. And certainly at Lorillard you're interested in having those people who are taking up smoking for the first time smoking your brands; are you not?
A. No. At Lorillard we're interested in two things: we're interested in maintaining loyalty among the people that smoke our brands currently; and we're interested in getting people that currently smoke to switch to our brands.

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Q. But you're not interested in having someone who decides to take up smoking start smoking one of your brands?

A. Anyone that chooses to smoke, based on an informed decision that they would make as an adult, sure, we'd like them to smoke one of our brands.

Q. And if the person who is taking up smoking for the first time is under the age of 18, if they're going to smoke and they're under the age of 18, you'd like to have them smoke one of the Lorillard brands; wouldn't you?

A. We do not want them to smoke at all, period.

Q. But if they do smoke, you'd like them to smoke one of the Lorillard brands; correct?

A. We prefer to have them not smoke at all.

Q. But if they do make the decision to smoke, you would like to have them smoke a Lorillard brand; correct?

A. No, that's not correct.

Q. You mentioned brand loyalty. Is it your understanding that cigarette smokers are particularly brand loyal?

A. You would have to define for me what you mean by "particularly brand loyal."

Q. Well, in reference to other kinds of consumer

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products.
A. More so than other kinds of consumer products?
Q. Yes.
A. I do not know that.
Q. Are you saying you don't know one way or the other?
A. I'm saying that I do not know if cigarette smokers are more brand loyal than someone that drinks Pepsi.
Q. I understand that. My question is: You don't know whether they are or whether they aren't, you just don't -- you lack information to make that judgment.
A. I do not know.
Q. The second bullet point in this exhibit here says, "The brand loyalty of 18-year-old smokers far outweighs any tendency to switch with age." Do you see that?
A. Yes, I do.
Q. Is that --
From your experience at Lorillard, is that something that you believe to be true, that the brand loyalty of 18-year-old smokers outweighs their tendency to be switchers with age?
A. I do -- I do not know.

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Q. Again are you saying you don't -- you simply don't know, you lack information to know one way or the other?

A. I do not have information to tell me that they're more brand loyal than any other smoker might be.

Q. Turn, if you would, please, to the page that has a number page two at the bottom of the page. It's three or four pages in. Do you have that?

MR. MONICA: Small Roman numeral ii?

MR. FINZEN: No, actually Arabic number two.

THE WITNESS: Why don't you give me the Bates number.

MR. FINZEN: Last four numbers 8471.

A. Yes, sir, I have it.

Q. And the heading of this page is -- is entitled "THE IMPORTANCE OF YOUNGER ADULT SMOKERS." See that?

A. Yes, sir.

Q. And under --

About the middle of the page there there is Arabic one, "VOLUME?"

A. Yes, sir.

Q. And it -- it says, "Younger adult smokers are

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the only source of replacement smokers. Repeated government studies, parens, Appendix B, close parens, have shown that:"

Bullet point one, "Less than one-third of smokers (31 percent) start after age 18.

And bullet point two, "Only five percent of smokers start after age 24." Do you see that?

A. Yes, I do.

Q. Turn if you would, then, please, to near the back of the document, Bates number page that ends 8526.

A. Okay.

Q. Do you have that page?

A. Yes, I do.

Q. This is, in the upper right-hand corner, "APPENDIX B." Do you see that?

A. Yes, I do.

Q. And its title is "YOUNGER ADULTS' IMPORTANCE AS REPLACEMENT SMOKERS." See that?

A. Yes, I do.

Q. And it says below that chart at the top of the page, there's a bullet point that says, "More than two-thirds of male smokers start by age 18." See that?

A. Yes, I do.

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Q. And then it lists below that a -- a chart of "Current Male Smokers by Starting Age" and then "Start By" and "Start After." Do you see that?
A. Yes, I do.
Q. And that chart shows that on a cumulative basis, starting by age 17, 53.6 percent, starting by age 18, 68.7 percent. Do you see that?
A. Yes, I do.
Q. Have you ever seen statistics of government studies or government reports on age by which smokers start smoking contained within the advertising and marketing department at Lorillard?
A. I have not.
Q. Do you know whether anyone at Lorillard has a job responsibility that would entail tracking government studies of information on the age of current smokers or the age by which current smokers begin smoking?
A. Nobody does.
Q. And do you know that as a matter of -- of your knowledge? You do have knowledge that nobody does that?
A. There is nobody's responsibility --
Nobody I know of has that responsibility.
Q. Okay. Is it possible that somebody would have

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that responsibility without your knowledge?
A. Anything is possible.
Q. Is it likely?
A. No, it's not likely.
Q. And if I understood your testimony earlier, not only have you not seen government studies that would indicate these figures at Lorillard, nobody at Lorillard has told you that orally?
A. That's true.
Q. When you first became -- I guess I have to look back, but it was assistant brand manager for Newport?
A. Yes, sir.
Q. And that was approximately 1982?
A. Yes, sir.
Q. Do you --
Do you know what Newport's share of -- of the market was in 1982?
A. I don't recall exactly the share.
Q. Do you --
Do you have an approximate number in mind, or no recollection at all?
A. I would say, yeah, approximately two and a half share points.
Q. And if I understand you, it's about 6.3 today; is that correct?

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A. Approximately, yes.
Q. As the assistant brand manager or the associate brand manager and then ultimately brand manager for Newport over the years, and in fact --
I'm sorry. Your title today is --
A. Group brand director.
Q. Group brand director. Again with Newport as part of your responsibility; correct?
A. Yes, sir.
Q. Over the years, having those various positions of responsibility for Newport, have you come to learn that Newport has a relatively youthful group of consumers?
A. "Youthful" you need to define for me.
Q. Younger than the other brands that Lorillard markets.
A. Yes, younger than the other brands Lorillard markets.
Q. Would you say that the Newport consumers are younger than many brands of competitors on the market as well as a group?
A. I would say, yes, it is.
Q. Would you agree that the youthful direction of the consumers of Newport cigarettes would be similar to, say, the consumers of Marlboro cigarettes?

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MR. MONICA: Object, vague and confusing, use of the term "youthful direction."

A. Well I -- I have a problem with the term "youthful," because I assume what we're talking about here are smokers 18 years of age and older.

Q. I'm -- I'm talking about whatever knowledge you have of the age of the Newport smokers.

A. Okay. The only knowledge I have is 18 years of age and older.

Q. Okay.

A. Okay. So of -- of 18 years of age and older smokers, the answer to your question is -- if you'd repeat that.

Q. Surely.

Is the age of the Newport consumer similar to or like the age of the Marlboro consumer?

A. Yes and no.

Q. Explain, please.

A. Marlboro is a much larger brand. They have a larger -- the largest percent of each category, as I understand it.

Q. And do you know how many years Marlboro has been the largest-selling cigarette on the market?

A. I'm going to guess and say for as long as I've been around in this industry, so maybe 16 years.

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Q. As the assistant brand manager on up in the positions that you have held at -- at Lorillard, have you had occasion in developing marketing strategies or otherwise to -- to look back at sort of the marketing history of Newport cigarette?

A. For only as long as I was with the company. Beyond the time I came to the company, no, we didn't -- I didn't look beyond prior.

Q. In other words --

In other words, 1981 or so, or '82 when you got into your first Newport brand position, did you ever have occasion at that point to look back at marketing strategy for the product going back, say, into the '70s?

A. No, no, I never had an occasion to do that or a reason to do that.

Q. Who was the individual to whom you reported as the brand manager for Newport when you took your first position as assistant brand manager?

A. The brand manager's name was Roland Hammer.

Q. How long had Roland Hammer been brand manager for Newport when you arrived?

A. I'm going to guess and say three or four years.

Q. Do you know individuals who were still at Lorillard when you joined the company who had been

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Newport brand managers before Roland Hammer?
A. No, I do not.
Q. Have you met any individuals inside the company who ever said to you that they had any responsibility as brand manager or associate brand manager for Newport before you joined the company?
A. Yes, I have.
Q. Who would those individuals be?
A. Two people in particular, one gentleman by the name of Jim Rowe, that's R-o-w-e, and another gentleman by the name of Joe Giordano.
Q. You're going to have to spell that one, if you can.
A. G-i-o-r-d-i-n-o.
Q. And what position --
A. Does that look right now?
Q. What positions in the company did they hold when you knew them?
Are they still with the company?
A. They are not.
Q. Okay.
A. And they were not with the company when I came.
Q. Okay. How did --
How is it that you knew them?
A. Joe Giordano's wife worked for Lorillard, so --

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and I also worked for her at one point in time in outdoor advertising.

Q. Okay.

A. So I met him througyh her. And Jim Rowe had a lot of friends at Lorillard that he came to visit, so through those people I met Jim as well.

Q. Had either of them been the brand manager for Newport at any point in time?

A. Both of them had been brand managers on Newport.

Q. Did you ever have occasion to talk Lorillard business with them when you would have occasion to meet them?

A. Not with Joe Giordano. But Jim Rowe went on to become a promotion supplier on a couple projects for Lorillard.

Q. Did you ever have any occasion to discuss with Jim Rowe the marketing for Newport cigarettes at the time that he was brand manager?

A. Repeat that, please, so I understand you.

Q. Sure. Did you --

Did you ever have an occasion to discuss with Jim Rowe the marketing that was conducted for Newport cigarettes at the time that he was brand manager?

A. No, I did not.

Q. From any source, either within or outside the --

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the company, have you come to learn that Newport was directed from day one at a youthful market?

MR. MONICA: Object to the use of the term "youthful market." Vague and confusing.

A. If you're referring to 18 years of age and older, yes, that has always been the primary consumer for the Newport product.

Q. Do you understand what the reason for that was?

A. As I understand it, the reason for that was that that was the consumer profile. The people that were smoking the brand, that was their primary profile.

Q. How was that profile developed, do you know?

A. Researching smokers to determine what brands of cigarettes they smoke.

Q. And does Lorillard conduct that research itself?

A. Yes, sir.

Q. Through which department?

A. Through the market research department.

Q. And that's -- that's different from the department that you're in?

A. Yes, sir, it is.

Q. How do they conduct that research?

A. They conduct that research with outside suppliers that they have chosen to execute a specific kind of research study.

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Q. Are these companies that do consumer research by taking polls and that sort of thing?

A. More or less, yes.

MR. MONICA: Bruce, we're coming up on the second hour. I'd like to, when you reach a point, take another break and then press through to conclusion.

MR. FINZEN: Sure.

MR. MONICA: Is this a convenient time?

MR. FINZEN: No. Let's go on for a couple more minutes, if we can.

Do we have exhibits here from yesterday?

THE REPORTER: Yes.

MR. FINZEN: I need, if you would, please, Exhibit 1242.

(Exhibit 1242 handed to the witness.)

BY MR. FINZEN:

Q. Mr. Lindsley, I'm showing you now what's been previously marked as Plaintiffs' Exhibit 1242. It's a memorandum on Lorillard letterhead dated November 25, 1981, entitled "Smoker Incidence by Age Groups," bears Bates numbers 03926040 through 6042.

Is this a document that you have ever seen before?

A. Yes, sir, I have.

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Q. When --

When did you first see this document?

A. About three months ago.

Q. And what was the occasion for you seeing the document at that time?

A. It was part of my preparation for the last deposition.

Q. Had you seen it at any time before that deposition?

A. I don't believe so.

Q. Do you know who Laurie Moroz is?

A. She no longer works for Lorillard, but she was one of our research directors, I believe, back then.

Q. And what department was she in?

A. Market research.

Q. And that's the department that you talked about a few moments ago, people who get involved in doing research to determine brand direction or brand promotion?

A. No. This is the department that would research consumers, as we talked about before, consumer profiles.

Q. Okay.

A. Yeah.

Q. Do you know who J. R. Ave is?

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A. Yes.
Q. Who --
Who is he?
A. Well I think back at this -- for --
For one, he no longer works at Lorillard.
Q. Okay.
A. Okay? Back at this time I believe that he was the vice-president of advertising and brand management.
Q. And that -- that is the department that you are in?
A. That is the department that I am in.
Q. And then there are people shown as getting copies on this. J. G. Flinn, do you know that individual?
A. Yes.
Q. Who is that?
A. Again he does not work for Lorillard, in fact he is deceased, and he was the head of the market research department, the director --
Q. Okay.
A. -- of the department.
Q. And T. H. Mau?
A. Yes. T. H. Mau, who also does not work for Lorillard any longer, at that time was either a group

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brand director or vice-president of advertising and brand management.

Q. If you turn to the second page of this document, it says at the top of the page "SMOKER POPULATION 13 plus YEARS." See that?

A. Yes, I do.

Q. And then it lists an age group at the top of the -- the page in the columns that go across. Under the column "AGE" it shows 13- to 17-year-old age. Do you see that?

A. Yes, I do.

Q. And then in the far right-hand column it shows the number of 13- to 17-year-old smokers being 2,175,000. Do you see that?

A. Yes, I do.

Q. Mr. Ave was the head -- (clearing throat) excuse me -- the head of the marketing advertising department at this time?

A. Yes, he was.

Q. Did he get involved with market plans in terms of advertising and marketing plans for each of the brands with the brand manager or the group brand manager?

A. Yes, he did.

Q. And what involvement would he play?

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A. His involvement would be as a supervisor, and also as the final approval process before it would go on to the president of the company.

Q. And Ms. Moroz who wrote this memorandum indicated both in the memorandum itself and the page-two chart that we just looked at that the source of her -- of her information came from census population estimates, National Center for Health Statistics, and a Lorillard switching study. Do you see that?

A. Yes, I do.

Q. This document would seem to contradict your belief that Lorillard did not keep track of -- of the number of smokers under the age of 18; would it not?

MR. MONICA: I'm going to object to the question -- form of the question. Misstates his testimony.

A. Would you repeat the question, please?

Q. You can answer. Sure.

I said this document seems to contradict your belief that Lorillard did not keep track of the number of smokers under the age of 18; would it not?

A. I'm not sure that it would, because I don't know how this document came to Mr. Ave. This to me looks as if it was reporting information that currently exists for -- for anybody to view since I believe it

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was census bureau projections and numbers. And I don't know what this was used for. So it could simply be a statement of what anyone could have access to.

THE REPORTER: We have to change tape. Off the record, please.

(Recess taken.)

BY MR. FINZEN:

Q. Mr. Lindsley, in your last answer you said, "I'm not sure because I don't know how this document came to Mr. Ave." The document clearly came to Mr. Ave from Laurie Moroz in the market research department; correct?

A. Yes, it did.

Q. And my question to you was -- I --

I thought I understood you to say it was your belief that Lorillard did not keep track in any part of the company of government statistics or otherwise of smokers under the age of 18.

A. I was not aware of any.

Q. Okay. And you believe --

I thought you said you believed that they did not.

A. I -- I -- I -- I did believe that they did not.

Q. And this would -- would seem to be a document

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that would be contrary to that belief; correct?
A. This would be an exception to the rule, yes.
Q. Well you say an exception to the rule. What -- what rule are you referring to?
A. That we don't do research of smokers under the age of 18.
Q. And that's your understanding.
A. Yes, it is.
Q. But the fact that this document exists, is it at least possible that the rule was that you do and you simply weren't aware of it?
A. Well we don't. Lorillard does not do its own research on smokers under the age of 18.
Q. For --
A. And this to me is a reporting of information that's available to the general public.
Q. Okay.
A. Why she reported it to Mr. Ave, I do not know.
Q. Then let me -- let me ask this: Do you understand that Lorillard keeps in its files information on smokers under the age of 18 that is available from the government statistics or any other source?
A. Beyond what I see here, I am not aware of any other documents.

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Q. So it's your understanding that they -- that they do not.
A. That's my understanding.
Q. And this document shows that at least in November of 1981 they did.
A. On one occasion there was reported information based on general information provided by the census.
Q. From the market research department to the advertising and marketing department; correct?
A. Yes.

MR. FINZEN: Would you get Exhibit 1243.

(Discussion off the stenographic record.)

BY MR. FINZEN:

Q. Mr. Lindsley, I'm showing you now what's been previously marked as Exhibit 1243. It's a memorandum on Lorillard letterhead dated September 15, 1964, bearing number 01124257 through 4265.

Have you seen this document before?

A. I believe I have, yes.
Q. And when did you first see this document?
A. I'd say about three months ago.
Q. And in preparation for your deposition?
A. In the Arch case, yes.
Q. And this is a memorandum from M. Yellen to M. J. Cramer, president and CEO of the company?

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A. Yes.
Q. Do you know who M. Yellen is?
A. I'm going to guess and say that he was the head of our sales department.
Q. Turn, if you would, please, to page six of this document, numbered six at the top. In the middle of the page there's a paragraph that begins, "Our initial advertising campaign...." Do you see that?
A. Yes, I do.
Q. It says, "Our initial advertising campaign on NEWPORT was, quote, all set, close quote, and because of the sudden competition and the realization of our financial picture it was revised. It was felt that we, quote, wouldn't stand a chance, quote close, with all of us trying to go down the same road, dot dot dot. We had to sell a, quote, certain type, unquote, of person on the brand of NEWPORT until such time as we could establish sufficient volume to make the brand profitable and then gradually change our image to obtain, quote, other types of smokers, close quote.
"The brand was marked as a, quote, fun cigarette, dot dot -- close quote, dot dot dot. It was advertised as such and obtained a youthful group as well as an immature group of smokers." See that?

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A. Yes, I do.
Q. Is that an understanding of the group of smokers that has been the mainstay of the Newport brand --
MR. MONICA: I object.
Q. -- throughout the period of time that it has been on the market?
MR. MONICA: Object as a compound question.
MR. FINZEN: You may answer.
A. Would you repeat it, please?
Q. Sure.
Is that your understanding of the group of smokers that has been the mainstay of the Newport brand throughout the period of time that the brand has been on the market?
MR. MONICA: Same objection. Also vague and ambiguous.
A. I'm going to make some assumptions on this. My assumption is that "youthful group" represents smokers 18 years of age and older, and I would say yes. I have no idea how they define an immature group here. That could be defined in many different ways. And if you're implying that maybe it's under the age of 18, I would not make that assumption.
Q. Have you seen documents inside Lorillard that

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indicate that Lorrilard knew that the base of the Newport brand business was the high-school student?

A. I am aware of one document that was reported by a field sales representative, and that person's point of view was that Newport smokers were under age.

MR. FINZEN: Would you please get Exhibit 1244.

(Exhibit 1244 handed to the witness.)

Q. Showing you what's been marked as Plaintiffs' Exhibit 1244, it's a Lorillard letterhead document bearing the date of August 30, 1978, and Bates number 03537131 through 7132.

Have you seen this document before?

A. Yes, I have.

Q. And when did you first see this document?

A. Again, about three months ago.

Q. And do you know who Mr. Curtis Judge is?

A. Yes, I do.

Q. Who is he?

A. At that time he was president of Lorillard.

Q. And T. L. Achey or Achey?

A. Ted Achey. Yes, I know who he is.

Q. Who is he?

A. He was the director of merchandising.

Q. Director of merchandising when, in August of

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1978?

A. Oh, back in --

No. It appears that he was a field sales representative.

Q. And when you knew him at the company, he was the director of merchandising?

A. Yes, he was.

MR. MONICA: I'm going to object to this, Bruce. This has not been predesignated on notice you gave -- you gave me.

MR. FINZEN: Well, then this will be one of those exceptions as one that I missed on the check mark. If you want to take the time now off the record, I'll be happy to look through mine to confirm that or not, but --

MR. MONICA: Confirm what?

MR. FINZEN: Your representation.

MR. MONICA: I've got -- go ahead. I mean it's -- you didn't --

You didn't designate this one.

MR. FINZEN: Well I understand. Then --

MR. MONICA: If you'd like to ask him a question on this subject unrelated to this document --

MR. FINZEN: No, I want -- I want to use

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this document, John, and I'd like you to give me the leeway to use this document as one that was apparently missed. The very thing that I told you was going to happen is now happening. Are you going to object to me using this document? Because if you are, I'm going to call the judge. So you decide right now, and then we'll get the judge on the phone.

MR. MONICA: Did you intend to designate this one?

MR. FINZEN: Yes, I intended to designate it.

MR. MONICA: And it was just an oversight?

MR. FINZEN: Yes.

MR. MONICA: With that representation, I'll go ahead and acquiesce to your use of it.

BY MR. FINZEN:

Q. My last question to you was: And when you knew him at -- first at the company, he was director of merchandising?

A. I believe so.

Q. Did you know him to have any other position or title with the company after that?

A. I don't recall.

Q. Is he still with the company today?

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A. He is not.
Q. Do you know when he left the company?
A. He retired last year.
Q. And do you know whether or not he advanced -- I already asked you that question.
Is the director of merchandising a promotion over Field 3 rep?
A. Yes, it is. Many times over.
Q. He says in this document to Mr. Judge dated August 30, 1978, in the third paragraph, "The success of NEWPORT has been fantastic during the past few years. Our profile taken locally shows this brand being purchased by black people, parens, all ages, close paren, young adults, parens, usually college age, close parens, but the base of our business is the high school student."
Next paragraph, "NEWPORT in the 1970's is turning into the Marlboro of the 60's and 70's. It is the, quote, In, close quote, brand to smoke if you want to be one of the group." See that?
A. Yes, I do.
Q. Was it your understanding that the base of the Newport business was the high-school student?
A. No, it is not.
Q. Do you have any reason to believe that the

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statement made by Mr. Achey to the president of Lorillard in August of 1978 was incorrect?

A. I don't know about its reliability. I do know that it's one man's point of view. And it's not necessarily the position of Lorillard that this is the base of the Newport smoker.

Q. Based upon your experience working at Lorillard, are people inclined to report things to the president of the company that they believe to be untrue?

A. Actually people report all types of things to people.

Q. I understand that. My question is a little more specific than that. Based upon your experience at Lorillard, have you experienced people being inclined to report things to the president of the company that are untrue?

A. There are times when people misrepresent what they say in writing to anybody, president or otherwise.

Q. Okay. But you still haven't answered my question. Have you found that people at Lorillard have a tendency to report things to the president of the company that are untrue?

MR. MONICA: Asked and answered. I object. You may try again.

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A. I will still answer it the same way. I think whether it's the president or anyone else in the company, people do on occasion mis -- misrepresent what they think are findings.

Q. I understand your answer. My question is: Have you found that people have a tendency to report things to the president of the company that are untrue?

MR. MONICA: Same objection.

A. And I'm going to say on occasion I'm sure that's the case.

Q. On occasion it's the case that it's a tendency, or that it happens?

A. It happens.

Q. Certainly wouldn't be a tendency, though; would it, sir?

A. I don't think it would be a tendency, no.

Q. Do you still have Exhibit --

I got to find the exhibit number.

MR. FINZEN: The large exhibit there, what is the exhibit number on the front of that?

MR. MONICA: 1031.

THE WITNESS: 1031.

MR. FINZEN: 1031.

Q. Do you still have that in front of you, 1031?

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A. Yes, sir.
Q. Turn, if you would, please, to Bates page number 8494.
A. Okay.
Q. It has "Newport" in the upper left of the top of the page. Do you see that?
A. Yes, sir.
MR. MONICA: I want to make sure. This is -- this is an RJR document; right?
MR. FINZEN: Yes, it is.
Q. Turn, if you would, to the next page, continuing the discussion of Newport there, about -- on page 25.
A. Okay.
Q. The bottom of the paragraph says, "The SDS showed that Newport, like Marlboro, relies heavily on its users to provide brand imagery among younger adult smokers (see Appendix F). And, Newport has the youngest franchise of any brand in the market -- 53 percent were 18 to 24 years old in 1983."
That statistic, 53 percent of Newport smokers being 18 to 24 years old in 1983, does that comport with your recollection of the percent of Newport smokers in that age group at that time?
A. I -- I don't know if that percentage is -- is correct or not.

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Q. And the next sentences says, "Thus, it is no surprise that Newport has become the alternate younger adult identity brand, for those who don't just want to follow the crowd. For Blacks, it's today's alternative to Kool; for Whites, it's an alternative to Marlboro." See that?

A. Yes, I do.

Q. And did you understand from the marketing perspective that that was a goal of the marketing of Newport, to make it an alternative for blacks to Kool or whites to Marlboro?

A. No, I do not believe I read anything that states that.

Q. Did you understand from the statistics you had on smokers of the -- of the product that it was, in fact, a -- an alternative for Marlboro?

A. I -- I don't know what an alternative is. I don't know --

You need to define that for me.

Q. A choice other than.

A. Okay. What I do know is that both Kool smokers and Marlboro smokers are sources of business to Newport.

Q. Okay. Let me have you turn to page four, then, towards the front of this document, and the second

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bullet point about the middle of the page there says, "Newport's growth can also be entirely explained by its younger adult strength and aging." Do you see that?

A. Uh-huh, I do.

Q. It goes on to say, "Over the next five years, Newport is likely to gain .8 points of total smokers without any additional growth among younger adults. If its younger adult gains also continue, it could exceed a four percent total smoker share by 1988, a gain of about 1.5 points over 1983." See that?

A. Yes, I do.

Q. Do you recall whether the total share of Newport -- of the smokers was at or near four percent in 1988?

MR. MONICA: Again I -- I object to the use of this Reynolds document to frame questions to the witness in this fashion. I think it's misleading. Also -- also constitutes compound questions. But you may go ahead and answer.

A. Would you restate the question, please?

Q. Yes.

Was it your understanding that the total share of the market of smokers of Newport was approximately four percent by 1988?

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A. I think it was in the ballpark, but whether it was exactly four percent, I don't know. I don't recall.

Q. And did the research that you had available to you indicate that the growth between 1983, for example, when you were an associate brand manager --

A. Okay.

Q. -- for Newport, through 1988, did tend to come from the younger adult smokers of Newport?

MR. MONICA: Objection to the use of the term "younger adult." Vague and confusing.

A. As I recall, the growth of Newport was among menthol smokers in general. I don't recall specifically the age breakdown of those new smokers to Newport.

Q. You don't have any recollection whether they were in the, say, 18- to 22- or 18- to 20-year-old group?

A. I'm going to say that they were between the ages of 18 and 40.

Q. And would you agree that they were -- tended to be skewed towards the younger end of that age?

A. I do not recall that.

Q. Is that --

Are you saying you don't know, or you -- you

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don't agree with that --

A. I don't --

Q. -- when you say you don't recall?

A. I don't know. I don't recall today as we sit here whether that's true or not.

MR. FINZEN: Will you get Plaintiffs' Exhibit 1245, please.

Q. I'm showing you now what's been marked as Plaintiffs' Exhibit 1245. It is a document entitled "An Exploratory Study for Newport, SMOKING AND -- SMOKING AND PURCHASE BEHAVIOR OF YOUNG ADULTS" by shoi, balaban, dickinson research, Bates number 84411662 through 689.

Have you seen this document before?

A. Yes, I have.

Q. When did you first see this document?

A. Three months ago.

Q. And was that in preparation for your other deposition?

A. Yes, it was.

Q. This is the Shoi Dickenson you referred to earlier in your testimony?

A. Yes, it is.

Q. And you've had a chance to review this document in -- in your deposition -- or in preparation for

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your deposition before?
A. Yes, I have.
Q. And you're aware that this was a study that was conducted by Dickinson, Ms. Dickinson for Lorillard in October of 1981; correct?
A. Yes, that's correct.
Q. And there was in that study a group of some 32 smokers in the ages of 18 to 24 years of age?
A. Uh-huh.
Q. Correct?
A. Yes.
Q. And -- and this particular study, the age, if you turn to page five of the document, the age at which the 32 people in this study began smoking is reported in the third paragraph of half being in the ages of 10 to 13, with most of the remainder in the range of 14 to 17 years of age. See that?
A. Yes, I see that.
Q. You were at the company in October of 1981; were you not?
A. Yes, I was.
Q. Do you know from being at the company what the purpose of -- of this particular Newport study was?
A. I only know what it reads in the foreward in that smoking and purchase behavior --

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Q. Okay.
A. -- among 18- to 24-year-olds.
Q. Were there other occasions for research being done of this kind for smoking and purchase behavior of Newport products after 1981?
A. I believe there probably was, yes.
Q. Have you seen any of those documents?
A. I probably have, but I can't recall them.
Q. And the next paragraph on page five indicates that Marlboro and Newport were mentioned far more often than any other brand as the initial brand smoked of these individuals. Do you see that?
A. Yes, I do.
Q. And then at the end of that paragraph it says, "The initial brand smoked was many almost always the same brand used by a family member or friends, with friends cited far more often as smoking the initial brand." Do you see that?
A. Yes, I do.
Q. Is it your understanding, while you have been in marketing and advertising for Lorillard with the Newport brand, that peer pressure is a motivating factor for people to pick a brand as an initial brand?
A. I have heard that, yes.

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Q. Is that factor something that is captured or acted upon in the marketing plans for Newport cigarettes?
A. Can you give me an example of what you might be referring to?
Q. Some method of the marketing plan being directed at -- being directed at trying to show the brand as being one that is peer accepted.
A. Yes.
Q. And what -- what forms of creative marketing does that take?
A. Typically in the form of the way we execute our advertising.
Q. I understand. And I'm asking now if you can give me a detail of what -- what that creative execution would be.
A. It would in the form of advertising, it would show a depiction of smokers, a group of smokers together.
Q. Okay. The idea being that this is something about the -- the cigarette that makes it somewhat of -- of a group function or a group appeal?
A. No, I think that's -- that's the -- the definition of who those smokers are that were smoking Newport.

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Q. Identity, then, of the smokers with the group.
A. Yes, as we understand who those smokers were at that point in time.
Q. I understand.
And if you turn over to the next page, at the top of the page, the second paragraph --
I'm on page six now; correct?
A. Yes, sir.
Q. The second paragraph says, "Discussion of response to various types of promotional effort shows these young smokers to be quite unresponsive - a reflection of their loyalty to current brand." See that?
A. Yes, I do.
Q. Again, did you come to learn in your various roles as -- in brand management for Newport that Newport smokers were particularly brand loyal?
A. I -- I don't know that. I don't recall having read anything like that.
Q. In terms of the overall cigarette industry, have you seen statistics that would indicate that the number of smokers percentage-wise of all smokers that represent switchers over the course of -- of a year is in the three to four percent range?
A. Restate that for me, please.

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Q. Sure.

Have you seen statistics that would indicate that the percentage of smokers as a total of overall smokers in the marketplace that are switchers over the course of a year are in the three to four percent range?

A. I -- I've seen over the years information relating to switching. I do not recall those specific numbers.

Q. Is it your recollection of -- of the information you've seen that it would seem to indicate a trend of a relatively small percentage of smokers that are switchers each year?

A. Since I have been at Lorillard, I believe that that trend has gone just in the reverse, that there's less loyalty among smokers than there had been.

Q. In terms of a percentage, do you recall that that percentage is in the single digits of switchers in a given year?

A. I believe the last time I saw that information, and this goes back a couple years ago, that, no, it was definitely in the double digits.

Q. Do you have a number in mind?

A. No. I'd only be guessing.

Q. Would it --

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Would it be a -- a fair statement that percentage-wise, the largest percentage of smokers tend to purchase the same brand time after time as opposed to purchasing one brand this week, another brand next week, another brand the week after?

A. For -- for one, I believe that, like with any other product category, that a majority of consumption is among loyal consumers.

Would you just repeat that for me one more time? I lost my second train of thought.

Q. Yes. I said would it be a fair statement that the -- the large percentage, the largest percentage of smokers tend to purchase the same brand time after time as opposed to purchasing one brand this week, another brand the next week, yet another brand the next week after that?

A. My -- my second thought was that I believe smokers have a -- a -- a set of brands that they smoke, that they're not necessarily loyal to only one brand, but on occasion smoke others.

Q. And that --

The occasion for smoking the others would be relatively modest as a secondary source compared to the one brand that would be the primary source?

A. I think in general that could be the case. But

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I think certain brands have more appeal among smokers as a secondary brand, and therefore smoke those brands more often.

Q. Turn, if you would, please, back to the ad -- advertising code, which was Plaintiffs' Exhibit 1024. If you turn to page five of that, "Section 2," it says, "No cigarette advertising which makes a representation with respect to health shall be used, unless," and then there are a series of things that have to be done after that. See that?

A. Under "Section 2?"

Q. Yes.

A. Yes, I do.

Q. Is there still a provision in the Lorillard advertising code today that is like this with regard to making representations concerning health?

A. I believe something like this is written in our marketing code, yes.

Q. Have you seen Lorillard in the past, during the period of time when the advertising code was in force, that had advertisements that seemed to appeal to claims of health?

A. I will ask you to show me what you're referring to specifically. But since I've been at Lorillard for 16 years, no, I have not.

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Q. Okay. Let me ask you to mark this next, please.

(Plaintiffs' Exhibit 1261 was marked for identification.)

BY MR. FINZEN:

Q. Showing you now what's been marked as Plaintiffs' Exhibit 1261, it is an advertisement for True cigarettes bearing Bates number 03281259.

Have you seen this advertisement before?

A. Yes, I have.

Q. When's the first time you saw this advertisement?

A. Also three months ago.

Q. In this advertisement there is an individual sitting on a bench in what appears to be a locker room; correct?

A. Yes, it does.

Q. With what appear to be some golf clubs to the right side of the smoker as he faces you, left side of the page?

A. Okay. I -- I cannot see that, but I'll take your word that it's there.

Q. And on the copy side, which is the right-hand side of the page as you're looking at it, it says, "With all I've read about smoking and things I decided to:

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"1. Play as hard as I work.

"2. Cut out the heavy lunches.

"3. And either quit smoking or smoke True."

And then it says after that, "I smoke True." Do you see that?

A. Yes, I do.

Q. Is it a fair statement that this advertisement would be characterized as a claim that smoking True is healthier than smoking other cigarettes?

A. No, I don't think that's a fair claim.

Q. Well in terms of the introductory copy where it says, "With all I've read about smoking and things," --

A. Uh-huh.

Q. Okay. See that?

A. Yes, I do.

Q. -- do you know what the reference to "things" is there?

A. I do not.

Q. Then in the -- under the numbered sections it says, "Play as hard as I work." Would you understand that the philosophy of taking time out for recreation and doing so as frequently or as avidly as someone works is a -- is a good thing?

A. I -- I -- I don't know if it is or not.

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Q. Would you think that it would be healthier for people to take time out for recreation as opposed to working all the time?

A. I think recreation is important to anybody, but I'm not quite sure where you're going.

Q. And you've heard of individuals who were said to be working themselves to death? You heard that expression?

A. I've heard that expression, yes.

Q. And that frequently people who are Type A personalities and just work, work, work all the time might get told by family or friends, "You know, you ought to take some time for yourself. You ought to take some time off?"

A. Have I heard that?

Q. Yes.

A. No, I have not.

Q. Have you heard doctors advising people who were Type A personalities and workaholics that it was not healthy for them to do that, and it would make a healthy choice for them to take some time away from work and do some recreation?

A. No, I have not.

Q. You're -- you --

Do you disagree with that statement as being

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generally a true statement, that it's healthier for someone to take some time away from work for recreation than to work all the time?

A. As I said before, I think recreation is important to anybody. How much recreation, I can't determine that.

Q. The second item here talks about cutting out the heavy lunches. Have you heard it described that eating healthier by eating either lighter or less is a healthy way of living?

A. I have heard that, yes.

Q. Would you recognize a statement of cutting out heavy lunches as being a statement of one way to improve your health?

A. No, not necessarily.

Q. And the third thing it then says, "And either quit smoking or smoke True." Have you heard anyone ever say that they believe that quitting smoking was a healthy thing to do?

A. Yes, I believe I have.

Q. And isn't it true in the context of the copy of this ad that the implication of the "quit smoking or smoke True" is that it is also a healthy thing to do, smoking True, as -- just as it is healthy to do recreation and cut out heavy lunches?

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A. No, I don't think that's necessarily what this implies.
Q. You don't --
You don't view this ad as sending that message at all?
A. I do not view this ad as being a health claim.
Q. And you don't think that the reference to, either, from all that I've heard and read about smoking and things, that this tends to indicate that smoking True is an alternative to quitting smoking?
A. That could be one man's interpretation, but I would not interpret it this way.
Q. That would not be your interpretation.
A. No.
MR. FINZEN: Mark this next, if you would, please.
(Plaintiffs' Exhibit 1262 was marked for identification.)
BY MR. FINZEN:
Q. Showing you now what's been marked as Plaintiffs' Exhibit 1262, it's another advertisement for True cigarettes and it bears Bates numbers 103 -- I'm sorry, 03061397.
Have you seen this advertisement before?
A. Yes, I have.

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Q. And when's the first time you saw this?
A. This particular one, I think last evening.
Q. And this advertisement shows a woman standing at the side of a tennis net; correct?
A. Yes.
Q. With tennis racket by her side and some tennis balls by her side?
A. Yes.
Q. And it would appear that she has a cigarette in her right hand by her -- her head; correct?
A. Okay.
Q. And the copy on this advertisement says, "Considered -- I'm sorry, "Considering all I'd heard, I decided to either quit or smoke True.
"I smoke True." Do you see that?
A. Yes, I do.
Q. Do you think that this advertisement with that copy showing someone who is either just about to play or just finished playing a game of tennis implies that smoking True is a healthy thing to do?
A. No, I do not.
Q. Do you have page five of the code in front of you there?
A. Yes, I do.
Q. Under section one, (i), that we looked at

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earlier, it says, "Cigarette advertising shall not depict as a smoker any person participating in, or obviously having just participated in, physical activity requiring stamina or athletic conditioning beyond that of normal recreation." Do you see that?

A. Yes, I do.

Q. Do you think that this advertisement represents that this woman has just participated in tennis and is smoking a True cigarette?

A. Yes.

Q. Do you think that that violates the prohibition against showing people having just participated in a physical activity requiring stamina?

A. No, I do not.

Q. And -- and why do you believe that?

A. Because it goes on to read "beyond that of normal recreation," and I'm looking at this and I'm saying that this is an example of normal recreation.

Q. You believe that the "beyond normal recreation modifies" both "stamina" and "athletic coordination" -- or "conditioning?"

A. I'm not sure what you're asking me.

Q. In the phrase "physical activity requiring stamina or athletic conditioning beyond that of normal recreation," you're saying the phrase "beyond

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that of normal recreation" modifies "stamina;" is that what you're saying?

A. Well let me answer it this way: I -- I know plenty of people that play sports that don't have stamina or athletic conditioning to do so. They consider it to be normal recreation, and they go out there and play tennis or throw around a football. I also don't see her participating in these activities; she's standing there with a tennis racket in her hand and I'm sitting here looking at it and saying that does not go beyond normal recreation.

Q. And what is it that a copy of a tennis -- a woman in a tennis dress on a tennis court is -- what's the message that's trying to be delivered to the person who's reading this ad?

A. I think what we have to understand looking at this ad is that during this time they -- what was happening in the marketplace, what -- what they call tar wars, all of the major manufacturers were coming out with lower tar brands for smokers based on the want for consumers to have lighter-tasting cigarettes. I look at this ad as being our way of getting our fair share of that marketplace.

Q. I understand. But my question went to the -- to the ad itself and its setup. What is it about the

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woman standing at the tennis court with the tennis racket and balls by her feet and the cigarette in her hand that you were trying to imply to the person who saw this advertisement if it wasn't that smoking True is -- is a better and healthier thing to do? What is it that you were trying to do?

A. Well for one, I wasn't trying to do anything; this goes beyond my 16 years at Lorillard. I don't know what the intent of this particular ad was, so all I could do is hypothesize. I'm looking at a normal person doing a normal activity that's smoking a True cigarette.

Q. Is this something that you would use as copy today at Lorillard?

A. I would not use this as copy today.

Q. And why is that?

A. Because times have changed and what we talk about in our advertising specifically would be taste.

Q. And based upon your 16 years' experience with the company -- and -- and when I say "you," you're -- you understand you're here as a company spokesperson.

A. Yes, I do.

Q. So when I refer to "you," I'm really referring to Lorillard.

A. All right.

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Q. Okay? So when I say don't you believe that the implication here is showing the person in the tennis dress with that statement about "Considering all I'd heard, I decided to either quit or smoke True," that what Lorillard is doing is implying that smoking True is a healthy thing to do?

MR. MONICA: Object, it's been asked and answered.

MR. FINZEN: You may answer.

A. I do not think that this implies that smoking True is the healthy -- or a healthy thing to do.

Q. And don't you think that it implies that this is someone who is smoking, having just finished an activity requiring stamina?

A. No, I do not.

MR. FINZEN: Let me have you mark this next, please.

(Plaintiffs' Exhibit 1263 was marked for identification.)

BY MR. FINZEN:

Q. Showing you what's been marked now as Plaintiffs' Exhibit 1263, this is a Newport advertisement with Bates number 84187604.

Have you seen this advertisement before?

A. Yes, I believe I have.

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Q. And when is the first time that you saw this ad?
A. Probably during the course of my career as a review of Newport advertising.
Q. Do you believe that this advertisement for Newport has run during the period of time that you were with the company?
A. I believe that it has not.
Q. But you've seen it while you've been at the company is what you're saying.
A. I believe I have seen this advertisement, yes.
Q. This advertisement shows a group of four individuals, appears to be two men and two women. The second person in -- in line appears to have a cigarette in his mouth; does he not?
A. It appears like he might, yes.
Q. And these four individuals appear to be engaged in a tug-of-war with a rope; correct?
A. Yes.
Q. And the copy refers to "Newport, Alive with pleasure! After all, if smoking isn't a pleasure, why bother?" Right?
A. Yes, it does.
Q. Has that been a -- a phrase for Newport advertising that has been used over time, either one of those?

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A. "Newport, Alive with pleasure!" is still used today.
Q. Okay. What about the "After all, if smoking isn't a pleasure, why bother?"
A. I believe that stopped years ago, but I don't know specifically when.
Q. Would you agree that individuals engaging in a tug-of-war are -- are participants in physical activity requiring stamina?
A. No. I agree that this is an example of normal recreation among people.
Q. I don't honestly mean to be flip, Mr. Lindsley, but when's the last time you were in a tug-of-war?
A. Actually, earlier this summer.
Q. And where was that?
A. It was at a -- a get-together in New Jersey when I went home.
Q. And what kinds of people were at the get-together?
A. Friends.
Q. People your age?
A. Of different ages.
Q. And were there other sports that were participated in by the people at that -- at that get-together?

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A. Yes, sir.
Q. What were the other kinds of sports that you engaged in?
A. Volleyball, throwing around a baseball. That type of thing.
Q. And when you engaged in the tug-of-war this summer, do you recall whether any of the people who were on either side of the rope were smoking?
A. I do not recall.
Q. Have you --
Do you have a recollection of being involved in a tug-of-war at any other time other than that one you're recalling now?
A. Years ago. Years ago.
Q. Do you recall in any of those situations that any of the participants had a cigarette hanging out of their mouth?
A. I do not recall.
Q. You don't view this advertisement as violating that provision of the Cigarette Advertising Code that says you won't depict smoking in participants -- I'm sorry, among those people who are obviously participating in or just participated in physical activity requiring stamina?
A. No, because this does not go beyond normal

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recreation.

Q. What kinds of categories of things do you believe the advertising code considers to be stamina or athletic conditioning beyond that of normal recreation?

A. Anything that looks as if people are in the heat of competition. And that's a judgment call.

Q. Has that ever been a topic of discussion in the advertising group at Lorillard?

A. The heat of competition?

Q. Yes, what defines that?

A. No, it hasn't, because we don't intend to develop situations that are in that category.

Q. How -- how can you know that your ad -- or your ad copy or your ad pictorials won't develop that kind of a situation if you don't discuss what that kind of a situation is?

A. Because part of Newport advertising is to show people having fun and doing unexpected things, and the heat of competition to me would not fall under that type of general strategy for developing a Newport picture.

Q. Okay. And has that been the strategy for some time with Newport?

A. Yes, sir.

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MR. FINZEN: Mark this, if you would, please, next.

(Plaintiffs' Exhibit 1264 was marked for identification.)

BY MR. FINZEN:

Q. Showing you what's been marked as Plaintiffs' Exhibit 1264, it is an advertisement for Newport bearing Bates numbers 92732321. Do you have that in front of you, sir?

A. Yes, I do.

Q. This advertisement has copy that says at the top "Alive with pleasure!" and then below that "Newport," and it depicts the package, and in the middle it has a woman who appears to be wearing a bikini. Is that correct?

A. Yes, sir.

Q. Hugging --

MR. DOCHERTY: Just for the record, I'm sorry to interrupt. This is a two-page document, and the second page is 92732322.

MR. FINZEN: Oh, I'm sorry, there is a second page. The second page has a stamp on it. Correct?

THE WITNESS: Yes, it does.

MR. FINZEN: Thank you.

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Q. And it has a woman in a bikini that appears to be hugging a pair of legs; is that correct?
A. Yes.
Q. And is -- is it true --
It's hard to tell from this because of the copy quality, but is it true that they're also in -- in some form of water?
A. I believe that's true.
Q. Turn, if you would, please, to page four of the advertising code. Do you have that?
A. Yes, I do.
Q. Section 1.(d), it says, "Cigarette advertising shall not represent that cigarette smoking is essential to social prominence, distinction, success, or sexual attraction." See that?
A. Yes, I do.
Q. Isn't the purpose here of this advertisement, having this young woman in the water hugging legs, to indicate that Newport is associated with sexual attraction?
A. No, I don't believe so.
Q. Do you think that the picture that is displayed on this page is in any way sexually motivated?
A. No, it is not sexually motivated.
Q. Are we to believe from viewing this picture that

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this represents a -- a woman with a -- a man or that they are a couple?

A. No, I don't think necessarily that it would only imply that.

Q. What else would it imply to you?

A. He was standing there and she grabbed his legs.

Q. And what is the intent that's being directed here as the message of that pictorial?

A. Other than it's kind of a fun, unique, you know, situation. It's a -- just a snapshot, a moment in time.

Q. And -- and you don't think that there's a sexual attraction that's implicit in that photo?

MR. MONICA: Objection, asked and answered.

A. In the development of this ad, sexual attraction was never the primary strategy.

Q. Was this ad developed while you were with Newport?

A. Yes, it was.

Q. Was it, if not the primary strategy, was it a strategy?

A. I believe, no, we don't look at sexual innuendo as any guide to develop picture strategy for Newport.

MR. FINZEN: Let's take about two minutes

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here and let me review my notes.

MR. MONICA: Okay.

THE REPORTER: Off the record, please.

(Discussion off the record.)

BY MR. FINZEN:

Q. Mr. Lindsley, did I understand you to say that when the Harley-Davidson brand of Lorillard was established, you had responsibility as -- as some part of the brand management team for that initially?

A. Yes, I did.

Q. And what year was that?

A. Oh, I would say 1989. And I'm guessing.

Q. Late '80s?

A. Yes, sir.

Q. Okay. And when that brand was being developed, were you part of the initial strategy of brand development in terms of the market that that brand would be aimed at?

A. No, I was not.

Q. Was that already done by the time you came on board?

A. Yes. Lorillard had already selected a company to use to license for a cigarette brand.

Q. Okay. Had the decision about the market that that brand would be aimed at been made in advance of

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the licensing then?
A. I believe, yes, it was.
Q. And that licensing you're referring to is the licensing with Harley-Davidson, the motorcycle manufacturer --
A. Yes, sir.
Q. -- to utilize their name in the cigarette name?
A. Yes, sir.
Q. What is your understanding of the brand -- I'm sorry, of the -- of the market focus for that brand?
A. I believe that Harley-Davidson cigarettes was intended to compete with Marlboro against the male smoker universe of 21 years of age and older.
Q. Were you aware from any source in the late 1980s that Marlboro was far and away the largest-selling cigarette among smokers under the age of 18?
A. No, I was not aware of that.
Q. That was never brought to your attention by any source?
A. No.
Q. If that's a true statement, I want you to assume for a moment that that's true, would the pitting of Harley-Davidson in competition with Marlboro put the Harley-Davidson cigarette out there as a brand to be smoked by the same group of people, the under-18 age

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group of people that might be smoking Marlboro?
A. No.
Q. Can you put a brand out into the marketplace and track only a certain portion of people from the competition who you are -- are intending to get to smoke your brand?
A. I believe you can.
Q. And -- and how is that accomplished?
A. I would think it would be accomplished through the packaging design, it would be accomplished through the price positioning of the brand, it would be accomplished through what the advertising depicted, and it would be accomplished through where the product is merchandised in terms of class of trade and what types of promotions you would use to support it.
Q. Do you recognize the under-age smokers being particularly price sensitive? Are you aware of that?
A. Under-age smokers? I have no idea.
Q. Are you aware of the 18- to 21-year-old smokers being particularly price sensitive?
A. I am not aware of that either, no.
Q. Are you aware of younger smokers, let's take 18 to 21, being principally pack buyers?
A. I believe that's true.

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Q. And that being back buyers, they -- they tend to buy in locations that sell more by the pack than by the carton?

A. That's True, right.

Q. Convenience stores for example?

A. Anyplace primarily that would sell a pack.

Q. And with regard to sale of cigarettes, has Lorillard sold half packs when you've been with the company?

A. Yes, Lorillard has.

Q. Including among Newport brands?

A. Only Newport.

Q. Only in Newport?

And isn't that done, in part, out of the recognition of price sensitivity of younger smokers?

A. No, I believe not.

Q. What is your understanding of the reason that half packs are sold?

A. The half pack was sold and is sold today in two states, Mississippi and Louisiana, and the half pack was intended to compete with the influence and growth of price brands in the marketplace at that time.

Q. What do you mean by "price brands?"

A. During that time, brands that had a price point less than the price of a full-priced cigarette were

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becoming more important factors in the marketplace.
Q. The so-called underpriced or cheaper brand of cigarette?
A. Yes, sir.
Q. And isn't that exactly the reason the half packs were created, then, so that they would be priced competitively with full packs of cheaper cigarettes?
A. They were there so that we wouldn't lose business to lower-priced cigarettes.
Q. And the idea being that for approximately the same money, while they were purchasing fewer cigarettes, the brand loyalty might well keep them purchasing your half pack for approximately the same money as opposed to a full pack of some underpriced or cheaper competition?
A. That's a -- that's a fair interpretation.
Q. And wasn't that done in large part out of the recognition that among price-sensitive individuals, by far younger smokers were the most price sensitive?
A. I believe that's not true.
Q. You've never heard that from anybody in the industry?
A. All I have as a point of reference is that if you look at the demographic profile of lower-priced brands, they're primarily female and older smokers

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that smoke them.

Q. Let me show you what's been previously marked in this litigation as Plaintiffs' Exhibit 1041. This is an exhibit that is --

MR. FINZEN: Can I borrow one of those? Because I can't seem to find mine right now. Not yours; you need yours.

THE WITNESS: Well I'll share.

MR. MONICA: I've got one here.

Q. -- dated September 27th, 1982, it is a memo from D. S. Burrows to P. E. Galyan bearing Bates numbers 503011368 through 1369.

MR. MONICA: This is not a Lorillard document; is it?

MR. FINZEN: It is not.

BY MR. FINZEN:

Q. Have you seen this document before?

A. I have not.

Q. Did you see it in preparation for either of your depositions?

A. I have not.

Q. This document is entitled "MARKETING IMPLICATIONS OF THE NBER MODELS." Do you see that?

A. I do.

Q. And it says, "Attached -- The attached memo

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summarizes the findings of the National Bureau of Economic Research on relative price sensitivity of age/sex groups, per your request." Do you see that?

A. Yes.

MR. MONICA: Bruce, this is not on your list and you're out of time. But go ahead and do it. But let's --

MR. FINZEN: Yeah, I'm --

MR. MONICA: All right.

MR. FINZEN: -- finishing up here.

BY MR. FINZEN:

Q. Are you aware of the NBER?

A. I have no idea what that is.

Q. It goes on to say, "A key finding is that younger adult males are highly sensitive to price." Do you see that?

A. Yes, I do.

Q. And "This suggests that the steep rise in prices expected in the coming months could threaten the long term vitality of the industry, by drying up the supply of new/younger adult smokers entering the market." Do you see that?

A. Yes, I do.

Q. And it's dated in 1982, and then there's a series of recommendations that are made, and at the

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bottom of the page, the last bullet point on the first page under the heading, "I recommend marketing, quote, half-packs, close quote, because:" the last bullet point says, "Newport 10's are showing up in regular outlets, parens, not just vending, close parens, suggesting Lorillard may also be aware of this younger adult price sensitivity." Do you see that?

A. Yes, I do.

Q. Is the half-packs of Newports that were sold called Newport 10's?

A. Yes, they were.

Q. Did they --

A. Yes, they are.

Q. Did they come on the market in -- in approximately 1982 for the first time?

A. I -- I don't think so. They came on after that.

Q. Think it was later than that?

A. Yes, I do.

Q. And have you ever talked to anybody about the rationale for that being the price sensitivity as we've discussed already, but particularly the price sensitivity of younger adult males?

A. No, absolutely not.

Q. One other document I want to review with you

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before we finish, if I could ask you to mark this next.

(Plaintiffs' Exhibit 1265 was marked for identification.)

BY MR. FINZEN:

Q. Showing you now what's been marked as Plaintiffs' Exhibit 1265, it is a memorandum -- or I'm sorry, a letter dated August 17, 1993 from Timothy Hoelter, Vice-President and General Counsel of Harley-Davidson, on Harley-Davidson letterhead, to Ronald Goldbrenner, Associate General Counsel at Lorillard, and it has Bates number 91058719 through 90158720.

Have you seen this letter before?

A. Yes, I have.

Q. When is first time you saw this letter?

A. Last evening.

Q. Do you know Ronald Goldbrenner?

A. Yes, I do.

Q. Is he still with Lorillard?

A. He is not.

Q. This letter says in the second paragraph -- no, I'm sorry, in the first paragraph, beginning of the letter, "Thanks for meeting us last week to discuss our questions about Lorillard's proposed fall

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advertising campaign." See that?
A. Yes, I do.
Q. Were you involved with the Harley-Davidson advertising campaign in 1993?
A. Very possibly, but I might have just moved off of that brand at that time.
Q. It says in the next paragraph, "The recent California and FTC attacks on the Joe Camel advertising campaign are alarming and compel us to be sure that our Property will not be used to recruit underage smokers, intentionally or otherwise. These developments raise new moral and legal issues for us as we see Harley-Davidson in its broad image of products attracting an ever more youthful audience."
MR. DOCHERTY: I think that says "broad range of products," I thought I'd mention.
MR. FINZEN: I'm sorry.
Q. -- "broad range of products attracting an ever more youthful audience. Forecasting how children will react to massive publicity about a Harley-Davidson cigarette is complex, and selling a new cigarette at a discount price to increase its affordability to children, which could be an enticement even without the accompanying, quote, low price, close quote, slogans." See that?

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A. Yes, I do.
Q. Does --
Do you have a recollection that there was a change in marketing direction for Harley-Davidson with regard to its price point for the fall of 1993?
A. Yes.
Q. And was that an effort to find a way to reduce the price to make it more competitive with the other lower-priced cigarettes on the market?
A. Yes, it was.
Q. What was the reason for that, or what occasioned that to happen?
A. We did not meet our objective as a full-priced brand.
Q. And did the matter of the Harley-Davidson cigarette being sold as a reduced-priced or a cheaper-priced brand get resolved to the satisfaction of Harley-Davidson?
A. I believe it did, because we did go into some test markets with Harley-Davidson as a low-priced brand.
Q. Ultimately the license agreement for use with the Harley-Davidson product name ceased; correct?
A. Yes, it did.
Q. And was that as a result of the agreement

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lapsing, or did Harley-Davidson withdraw from the agreement?

A. Harley-Davidson withdrew from the agreement.

Q. And isn't the reason that they withdrew because they believed that the Harley-Davidson cigarette, especially at a lower price, was simply being consumed by too many under-age smokers?

A. No, I do not believe that was the case at all.

MR. FINZEN: That's all the questions I have.

MR. MONICA: I have no questions. The witness will read and sign.

THE REPORTER: Off the record, please.

(Deposition concluded at 1:50 o'clock p.m.)

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C E R T I F I C A T E

I, Richard G. Stirewalt, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the testimony of VICTOR D. LINDSLEY at the time and place aforesaid; and that the foregoing transcript consisting of pages 1 through 141 is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at Charlotte, North Carolina, this 26th day of September, 1997.

RICHARD G. STIREWALT
Registered Professional Reporter
Notary Public

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C E R T I F I C A T E

I, VICTOR D. LINDSLEY, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 1 through 141, and that said transcript is a true and correct, full and complete transcription of my deposition except:

VICTOR D. LINDSLEY
Deponent

Sworn and subscribed to before me this day of , 1997.

Notary Public

My commission expires .

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